

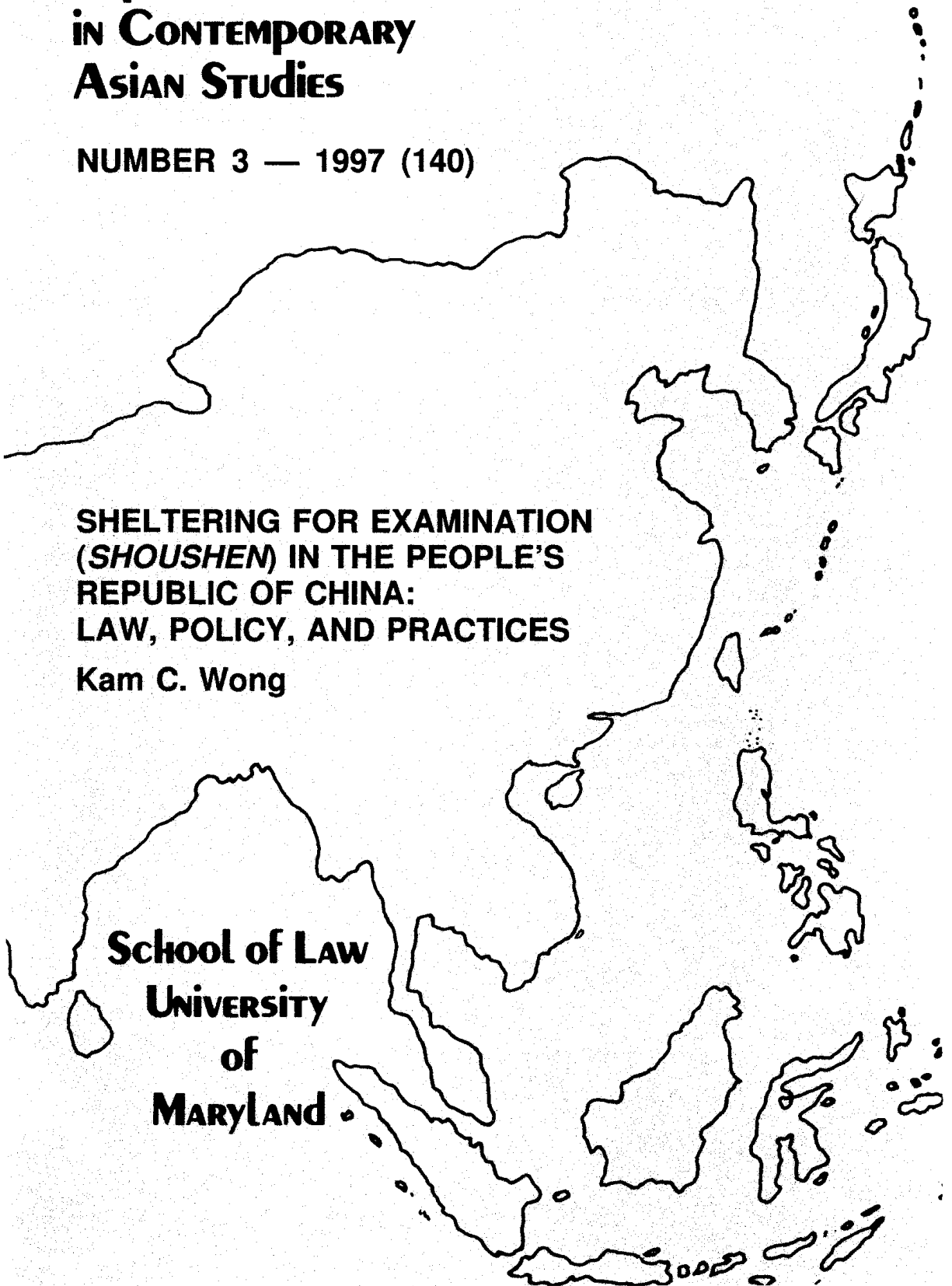
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**SHELTERING FOR EXAMINATION
(*SHOUSHEN*) IN THE PEOPLE'S
REPUBLIC OF CHINA:
LAW, POLICY, AND PRACTICES**

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I. INTRODUCTION

In 1961, the People's Republic of China's ("PRC" or "China") *gongan* (public security or police) adopted a measure called "*shouron shencha*" ("*shoushen*"), meaning "sheltering for examination" to stem the increasing flow of purposeless migrants ("*mangliu*") throughout the nation.¹ *Shoushen* was an investigative measure to detain suspect criminals who had no known status or confirmed residence, or who were "itinerant criminals" ("*liucuan fan*").² As the term evolved, *shoushen* was most often used in the following situations: (1) in lieu of legal sanctions; (2) in lieu of investigation, prosecution and adjudication; and, (3) as an extra-judicial measure to secure dispute settlement.³

Shoushen was not a legislatively sanctioned police power. It has never been officially adopted by the National People's Congress ("NPC").⁴ As originally conceived, *shoushen* had few proce-

1. For a brief history of *shoushen*, see "Wang Cuihua bufu Suxian diqu xingzheng-shu gongan chu shouron shencha an" (The Case of Wang Cuihua's Refusal to Accept Sheltering for Examination by Su County District Government Administration Office Public Security Bureau) (Anhui Province, Guzhen County, People's Court (1990) Guzhi No. 3) [hereinafter "Case 9"] in *Zhongguo shenpan anli yaolan* (Important Overview of Chinese Adjudicated Cases) (Beijing: Renmin gongan daxue chubanshe, 1992), p. 1183 [hereinafter "*Adjudicated Cases*"].

2. "Guowuyuan guanyu jian qiangzhi laodong he shouron shencha liang xiang cuoshi tongyi yu laodong jiaoyang de tongzhi" (State Council Circular Regarding the Merger of Labor Reform and Investigative Detention) (State Council (1980) No. 56) (promulgated February 29, 1980) [hereinafter "State Release (1980) 56"] in *Zhonghua renmin gongheguo guowuyuan gongbao* (State Council Gazette of the People's Republic of China) (April 16, 1980), pp. 57-58 [hereinafter "*Gazette*"]. For an English translation, see *Law Annual Report 1982/3* at pp. 307-308 (Hong Kong: Kinsway International Publication Ltd., 1982).

3. See discussion to Part V "The Failure of Process: The Nature of *Shoushen* Abuse."

4. *Shoushen* has nevertheless been favorably received by the NPC. "Guanyu ruhe lijie he zhixing falu ruogan wenti de jieda (er)" (Regarding Solutions to Certain Questions Concerning the Understanding and Execution of the Law (2)) (promulgated on March 2, 1988) [hereinafter "Jiangxi Province Answers"] the NPC Standing Committee cited approvingly "Guanyu yange kongji shiyong shouron shencha shouduan de tongzhi" (Circular Regarding the Serious Control Over the Use of Sheltering for Examination Measure) (Public Security Report (1985) No. 50 document) (July 31, 1985) [hereinafter "Public Security Report (1985) 50"] in *Zhonghua renmin gongheguo falu*

dural safeguards. The State Council and Ministry of Public Security were compelled to issue a number of administrative directives providing for the proper use of *shoushen*, including directives on jurisdictional scope, approval authority, time limits and administrative procedures. Such piecemeal control measures were however often inconsistent, unclear, over-broad and open-ended.⁵ The NPC Standing Committee, State Council, Supreme People's Court, Supreme People's Procuracy and Ministry of Public Security all attempted to control the exercise of *shoushen* but have met with little success.

On February 28, 1995, the NPC Standing Committee adopted the Law on People's Police of the PRC.⁶ On March 17, 1996, the NPC adopted the amended Criminal Procedure Law of the People's Republic of China⁷ [hereinafter "the PRC Criminal Procedure Law of 1996"]. Both statutes seek to place police investigation powers, including *shoushen*, under strict legal control. Thus, the PRC Criminal Procedure Law of 1996, while not mentioning *shoushen* by name, places all public security coercive measures,⁸ including *shoushen*, under one unified procedural control scheme. Accordingly, the public security "must strictly observe this law and relevant provisions" in investigating, arresting and detaining suspects.⁹

guifanxing jieshi jicheng (Zengbu ben) (Annotated Compilation of PRC Laws and Restrictive Interpretations) (supplemental copy) (Changchun: Jilin renmin chubanshe, 1991), at pp. 8-9 [hereinafter "*Restrictive Interpretation II*"].

5. Chen Weidong & Zhang Tao, "A Research into Certain Questions Regarding Sheltering for Examination" in *Zhongguo faxue* (Chinese Legal Science), 2/1992, 82-87 [hereinafter "Chen & Zhang I"].

6. "Zhonghua renmin gongheguo renmin jingcha fa," Decree No. 40 of the President of the PRC (The Police Law was adopted by the 12th Session of the Eighth NPC Standing Committee on February 28, 1995 and was promulgated with immediate effect) in *Gazette*, *supra* note 2, Issue No. 8, April 10, 1995, p. 266. For Chinese text, see *Fazhi ribao* (Legal System News), March 4, 1995, p. 3 [hereinafter "PRC Police Law"].

7. "The PRC Criminal Procedure Law" (promulgated on July 1, 1979) [hereinafter "PRC Criminal Procedure Law of 1979"] was amended in accordance with the "Decision on Amending The PRC Criminal Procedure Law" made on March 17, 1996. For an unofficial English translation, see *FBIS-CHI-96-069*, April 9, 1996 [hereinafter "PRC Criminal Procedure Law of 1996"].

8. See generally Chapter VI Coercive Measures, PRC Criminal Procedure Law of 1996. The term coercive measure is not defined. Art. 50 provides a contextual understanding of coercive measures. Coercive measures therein conceived include police summons, investigative detention, home surveillance and arrest.

9. See PRC Criminal Procedure Law of 1996, Chapter 1, art. 3, paragraph 3. See also art. 14.

This article explores the law, policy and practices of *shoushen* as a police power. After a brief introduction in Part I, Part II details the origin, historical development, use and regulation of *shoushen*. Part III describes and discusses the latest efforts by the NPC to regulate *shoushen* with the promulgation of the Police Law of 1995 and PRC Criminal Procedure Law of 1996. Part IV examines three sets of procuratorate data — legal violations by the police, illegal detention prosecutions, and self-reporting of illegal and over-extended detention — to ascertain the prevalence of *shoushen* abuse in the 1980s. Part V examines some typical court cases to ascertain the nature of *shoushen* abuse. The conclusion in Part VI offers a summary of the paper, observing that the latest legislative efforts to control *shoushen* signal the beginning, not the end, of an arduous campaign against the abuse of police powers in China.

II. THE HISTORY OF *SHOUSHEN*

A. Origin and Early Development

On November 31, 1961, the Ministry of Public Security filed a report to the Chinese Communist Party Central Committee — “A Report Regarding Resolutely Stopping the Free Movement of Population”¹⁰ — calling attention to the growing “*mangliu*” problem facing the nation. The report noted that as a result of three years (1959-1961) of natural catastrophes, the rural population had migrated increasingly into the cities for food, shelter and jobs, in short, for survival and betterment of life.¹¹ This exodus of peasants had to be stopped lest it disrupted the nation’s political and economic development.¹² The report suggested a three-pronged attack on the

10. Promulgated on November 31, 1961, see Zha Zhenjian, *Zhongguo fazhi sishinian (1949-1989)* (Forty Years of Chinese Legal System, 1949-1989) (Beijing: Beijing daxue chubanshe, 1989), p. 286 [hereinafter “*Forty Years*”].

11. See Ge Xianxian & Qiu Weiyang, *Zhongguo mingong chao* (China’s Labor Worker Exodus) (Shanghai: Zhongguo gouji guano chubanshe, 1990), p. 167 [hereinafter “*Exodus*”].

12. See “Report to the Second Plenary Session of the Seventh Central Committee of the Communist Party of China” (promulgated on March 5, 1949) in *Selected Works of Mao Tse Tung*, Vol. IV (Beijing: Foreign Languages Press, 1961), pp. 361-381. See also “Instruction Regarding Dissuading the Peasants from Blindly Moving into the City” (promulgated on April 17, 1953); “Circular on the Continuous Implementation of the Instruction Regarding Dissuading the Peasants from Blindly Moving into the City” (promulgated on March 12, 1954); and “Directive Regarding the Stopping of Peasant Population from Blindly Flowing Outward” (promulgated on December 18, 1957) in *Exodus*, *supra* note 11, at p. 178; Editorial: “Stopping the Peasant Population from Blindly Flowing Outward,” in *Renmin ribao* (People’s Daily), December 18, 1958, at 1.

problem, including the use of *shoushen*.¹³ The Communist Party Central and State Council had earlier approved of the use of forced labor (“*qiangzhi laodong*”) and *shoushen* by public security organs to deal with petty offense criminals and suspected itinerant criminals. The *shoushen* subjects were forced to engage in forced labor along side with those in need of labor education (“*laojiao*”).¹⁴ Those who were considered in need of labor education were all social misfits requiring reform and awaiting reintegration.¹⁵

Since its original use in 1961, *shoushen* was a necessary complement to the reform through labor strategy in dealing with social misfits. In 1963, the Minister of Public Security signaled a willingness to use *shoushen* more broadly as a crime fighting tool, i.e., in dealing with itinerant criminals.¹⁶ In spite of its expansive use, *shoushen* has never been formally incorporated into the overall police powers regulatory scheme. Until very recently (1995-6),¹⁷ *shoushen* was not provided for in the *primary legal* documents governing the exercise of police powers, i.e., the PRC Constitution of 1982,¹⁸ the PRC Criminal Procedure Law of 1979,¹⁹ and the PRC

13. The other two measures were: (1) stopping people from emigration; and, (2) perfecting transportation control. See *Forty Years*, *supra* note 10, at p. 286.

14. “Supplemental Regulations Regarding Ten Current Public Security Concrete Policy Issues” (promulgated on April 20, 1961) in *Gongan jiguan banli laodong jiaoyan anjian fagui huibian* (Collection of Public Security Regulations On Handling Labor Education Cases) (Beijing: Jingguan jiaoyu chubanshe, 1992), p. 5 [hereinafter “*Labor Education Cases*”]. See also Public Security Report (1985) 50, *supra* note 4.

15. As originally designed, forced labor and labor education were rehabilitation and reform measures mainly intended for three types of people from the old society: (1) counter-revolutionaries and bad elements; (2) rightist elements and reactionary elements; and, (3) those who were poisoned by the old society. *Id.*

16. See Zhou Guojun, “Research into the Question of Whether Sheltering for Examination Should Be Maintained or Abolished,” *Zhengfa luntan* (Tribute of Political Science and Law), Vol. 1 (Feb. 1989), p. 36 [hereinafter “Zhou”] as cited in Tao-tai Hsia & Wendy I. Zeldin, “Sheltering for Examination (Shouron Shencha) in the PRC,” in *Occasional Papers/Reprints Series in Contemporary Asian Studies*, No. 3- 1993, p. 10, note 9 [hereinafter “Hsia & Zeldin”].

17. See Part III “Legislative Responses to *Shoushen* in 1996” *infra*.

18. “Zhonghua renmin gongheguo xian fa” (passed by the 5th meeting of the 5th NPC on December 12, 1982, with immediate effect) in *Zhonghua renmin gongheguo gongan falu quanshu* (Comprehensive Public Security Laws of PRC) (Jilin: Jilin renmin chubanshe, 1995), pp. 4-18 [hereinafter “*Gongan fa*”].

19. “Zhonghua renmin gongheguo xingshi susong fa” (PRC Criminal Procedure Law) (promulgated on July 1, 1979). *Ibid.*, pp. 159-171. See English translation in *The Laws of the PRC (1979-1982)* (Beijing: Foreign Languages Press, 1987), pp. 120-150 [hereinafter *The Laws of the PRC (1979-1982)*].

Arrest and Detention Regulations of 1954 and 1979.²⁰ Except for the circulars and directives discussed below, none of these *overall* regulatory schemes or *comprehensive* control measures explicitly took *shoushen* into account. At the Third Plenum of the Eleventh Central Committee in 1978, the Party called for a more reliable and accountable legal system.²¹ The Ministry of Public Security responded by promulgating the "Circular Regarding the Reorganizing and Strengthening of Sheltering for Examination of Itinerant Criminals" [hereinafter "Circular"²²] which provided, for the first time, a rudimentary procedural framework for the employment of *shoushen* by the police. The Circular provided that *shoushen* detention should be centralized²³ and limited.²⁴ *Shoushen* should follow strict approval procedures²⁵ and a well-defined time limit.²⁶ The Circular was clearly designed as an interim measure to address a growing concern, allowing more time for experimentation and reflection.

The Circular alerted to the existence of a 1975 State Council document²⁷ on *shoushen*. This policy directive required all *shoushen* farms to be established at the local and city first class public security organ level. It also made provisions for the deployment of special *shoushen* teams at the *laodong jiaoyang* farms.²⁸ The policy direc-

20. "PRC Arrest and Detention Regulations" (promulgated on February 23, 1979). See *Zhonghua renmin gongheguo falu quanshu* (Collection of the Laws of the PRC) (Changchun: Jilin renmin chubanshe, 1989), pp. 87-93 [hereinafter "PRC Laws"]. See esp. art. 15.

21. See "Public Declaration of the Chinese Communist Party, Eleventh Central Committee, Third Plenary Session" (passed on December 22, 1978) in *Collection of Important Documents Since the Eleventh Central Committee, Third Plenary Session* (Beijing: Chinese Communist Central Party School Press, 1981), pp. 1-11.

22. "Guanyu zhengdun he jiaqiang dui liucuan fanzui shouron shencha gongzuo de tongzhi" (November 1, 1978) [Ministry of Public Security, document (1978) no. 87] (promulgated on November 1, 1978), in *Zhongguo gongan baike quanshu* (Chinese Public Security Encyclopedia) (Changchun: Jilin renmin chubanshe, 1989), p. 224 [hereinafter "Encyclopedia"].

23. *Id.*

24. *Id.* (*Shoushen* should be used only against current or important *liucuan fan*).

25. *Id.* (*Shoushen* should first be fully documented by the local police, then endorsed by the *fenju* or county public security, and finally approved by the local or city public security bureaus. Further, complicated cases should be discussed by the *shoushen* leadership and approved by the local or city security bureaus.)

26. *Id.* (*Shoushen* should not last for more than one month).

27. State Council (1975) No. 136 document.

28. "Guanyu xian, zhen shouron laodong jiaoyang he diqu juban laodong jiaoyang changsuo wenti de pifu" (Official Reply to Question Regarding County, Township Labor Education Farm and Local Area Establishing Labor Education Farm) (1980 Public

tive clearly shows that: (1) the State administrative authority had long been concerned with the abusive uses of *shoushen*; there were internal administrative regulations for the control and regulation of the *shoushen* power long before 1978; and, (3) the State Council had experimented with the centralized administrative control of *shoushen*.

B. Judicial Intervention

From 1978 through 1980, the Supreme People's Court ("the Court") used its constitutional interpretative power to issue a number of key opinions dealing with *shoushen*.

On July 11, 1978, in response to an inquiry by the Liaoning higher people's court, the Court issued the following opinion:²⁹

We have already received and read your request for instruction, Liao fa <1978> No. 20. . . . We are in agreement with your view. That is, the time served during the period of sheltering for examination can be used to offset the regular criminal term. As to the method of calculation, one day served under sheltering for examination shall be used to offset one day of regular criminal term. It is hereby replied.³⁰

On October 21, 1978, in response to an inquiry by the Xian higher people's court, the Court agreed with the Xian court that the time spent during "investigative separation" ("*geli shencha*") amounted to a deprivation of freedom of the person and should be offset against a subsequent criminal sentence. The Court further stated that if the sentence had already been served, nothing more should be done. The fact that the offender was a state worker who continued to draw his salary while in custody did not alter the fact that his freedom was deprived. The Court also observed that since

Security Report (Education) 137) in *Labor Education Cases*, *supra* note 14, pp. 107-8 [hereinafter "*Labor Education Farm*"].

29. "Official Reply Regarding Whether the Time Spent by Offenders During Public Security Sheltering for Examination Can Be Used to Offset Against Criminal Sentence, Liaoning Higher People's Court (1978) Request for Instruction No. 20" [hereinafter "Liaoning Higher People's Court (1978) Request for Instruction No. 20"] in *Zhonghua renmin gongheguo falu guifanxing jieshi jicheng* (Annotated Compilation of PRC Laws and Restrictive Interpretations) (Changchun: Jilin renmin chubanshe, 1990) [Hereinafter *Restrictive Interpretation I*], p. 121.

30. As quoted in Hsia & Zeldin, *supra* note 16, at p. 12.

geli shencha was not provided for by law, it should not be used in the future.³¹

On November 17, 1978, the Court in response to an inquiry by the Henan higher people's court agreed with the Henan court that the time spent by two released prisoners on bail pending trial could not be used to offset a criminal penalty.³²

On January 19, 1979, the Court in response to an inquiry by the Yunnan higher people's court observed that the issue of whether the time spent during *shoushen* could be offset against prison terms had already been settled in the affirmative.³³ The Court further observed that if there was more than one *shoushen* period, only the latest one was to be counted against the present prison term.³⁴

On April 27, 1979, the Court in response to a request for instruction from the People's Liberation Army ("PLA") military court determined that the time spent in *geli shencha* should be offset against any prison sentence later imposed, but that the salary paid during the confined period could not be reclaimed. In so doing, the Court concurred with the PLA court's observation that administrative surveillance ("*xingzheng kanguan*") and investigative separation ("*geli shencha*") were extra-legal measures from the lawlessness ("*wufa*") era of the "gang of four" and thus enjoyed no legal status.³⁵

On June 11, 1979, the Court in response to an inquiry by the Jilin higher people's court observed that "forced labor class" ("*qi-ang lao ban*") and "law offenders' learning class" ("*bufa rennyuan xuexiban*") were both coercive measures depriving of people's free-

31. "Official Reply Regarding Whether the Time Spent by Offenders During Investigative Separation in Detention Centers Can Be Used to Offset Against Criminal Sentence, Xian Higher People's Court (1978) Request for Instruction No. 18" in *Restrictive Interpretation I*, *supra* note 29, at p. 121.

32. "Official Reply on Two Issues Regarding Whether the Time Spent on Bail Awaiting Trial Can Be Used to Offset Against Criminal Sentence, Law Procedure (1978) Request for Instruction No. 25," *id.*

33. The Court cited approvingly "Liaoning Higher People's Court (1978) Request for Instruction No. 20" as a precedent, *supra* note 29.

34. "Official Reply Regarding Whether the Time Spent by Offenders in Public Security Sheltering for Examination Can Be Used to Offset Against Criminal Sentence, Judicial Process (1978), Request for Instruction No. 50," *id.*, *Restrictive Interpretation I*, *supra* note 29, at pp. 121-122.

35. "Official Reply Regarding Whether the Time Spent by Offenders under 'Investigative Separation' Before Arrest Can Be Used to Offset Against Criminal Sentence," *id.*, at p. 122.

dom and thus time spent in such classes should offset a criminal sentence.³⁶

On September 24, 1979, the Court, in response to a report requesting an instruction³⁷ filed by the Shanghai people's higher court, concerning prolonged detention (from a few months to a few years) of former labor reform prisoners, agreed with the Shanghai court that such investigative detention should be allowed as an offset against a criminal sentence subsequently imposed. The Court also cautioned against any additional sentence (in anticipation of the offset) unless it was clearly warranted and imposed after proper judicial procedures were followed.³⁸

On April 17, 1980, the Court, in response to a request for instruction by the Fujian higher people's court, agreed with the Fujian court that investigative separation before arrest during the "Gang of Four" era should be used as an offset against criminal sanctions subsequently imposed.³⁹

Substantively, the Court's pronouncements served as official endorsements of *shoushen*, previously a dubious legal practice. In making *explicit* legal provisions for offsetting time spent during *shoushen* against subsequent criminal sentences, the Court *implicitly* acknowledged the legitimacy of *shoushen*. The Court also made clear that illegal investigative detention under whatever names and for whatever purposes constituted a deprivation of freedom and should not be used. More significantly, the Court's pronouncements reflected deep concerns by the PRC political leadership over runaway police authority.⁴⁰

36. "Official Reply Regarding Whether the Time Spent by Criminals During Sheltering for Examination Can Be Used to Offset Against Criminal Sentence, Jilin Higher People's Court Law (1979) Request for Instruction No. 35," *id.*, at pp. 122-123.

37. "A Report Requesting for Instruction Regarding Whether Time Spent in 'Investigative Detention' By Former Prisoners Who Are Required to Stay and Work at Prison Site by the Labor Reform Authority Can Be Offset Against Prison Sentence," *id.*, at p. 123.

38. "Official Reply Regarding Whether the Time Spent in 'Investigative Detention' by Former Prisoners Required to Stay and Work at Prison Sites by the Labor Reform Authority Can Be Offset Against Criminal Sentence, Hu Higher People's Court Legal Process (1979) Request for Instruction Report No. 702," *id.*

39. "Official Reply Regarding Whether the Time Spent by Offenders under 'Investigative Separation' Before Arrest During the Critical Examination of the "Gang of Four" Can Be Used to Offset Against Criminal Sentence, Min Law Research (1979) Request for Instruction No. 139," *id.*, at p. 124.

40. See "Explanation Regarding the Seven Draft Laws" (adopted on July, 26, 1979) in *Zhonghua renmin gongheguo lifa sifa jieshi anli daquan* (A Compendium on Legisla-

The totality of administrative and judicial actions taken regarding *shoushen* should be read in context as an *overall* attempt and a *coordinated* effort by the political authorities to *regularize* the use of the police power through law and education.⁴¹ And, in a still larger context, they reflected the nation's commitment to bring in a new era of "rule-of-law."⁴²

C. *Shoushen* in the 1980s

Ever since the economic opening of China in the 1980s, the police have been faced with a sharp increase in crimes,⁴³ as police resources shrink⁴⁴ and police responsibilities grow.⁴⁵ One of the most pressing problems is how to deal with the criminal and social problems brought about by the tens of thousands of *mangliu* and *liucuan* criminals.⁴⁶

tion, Judicial Interpretations, and Case Laws of PRC) (Hebei: Hebei renmin chubanshe, 1990), pp. 53-59 [hereinafter "*Compendium of Laws*"].

41. See generally *Renmin ruhe yu gongan da jiadao* (How Can the People Deal with the Public Security?) (Beijing: Falu chubanshe, 1990), pp. 4-6 for the magnitude of PRC police powers.

42. Li Xue, "A discussion of the relationship between our country's criminal policy and criminal law," *Faxue* (Legal Studies), August, 1992, pp. 91-97; Zhang Youyum, *Guanyu shehui zhuyi fazhi de ruogan wenti* (Regarding Certain Questions on Socialist Legal System) (Beijing: Falu chubanshe, 1980).

43. The concern with crime was raised as early as August 1978 at the third "zhian gongzuo weiye" (public security work meeting) held in Beijing between August 12-31, 1978, and has since been an annual ritual. See *Xin zhongguo fazhi jianshe shishi nian yao nan: 1949-1988* (Beijing: Qunzhong chubanshe, 1990) (New China Legal System Construction: Overview of 40 Years of Significant Events: 1949-1988) (Beijing: Mass Publications, 1990), p. 409. The concern with crime led to successive nationwide anti-crime campaigns (1983-1987).

44. "Circular Regarding Strengthening the Management of Penalties and Confiscation and Guaranteeing of Case Handling Expenditure of the Police, Procuratorate, Court Departments (Ministry of Finance) (1990) No. 79" (promulgated on October 9, 1990) in *Restrictive Interpretation II*, *supra* note 4, at p. 12. (The Court observed that insufficient case handling expenses lead to various illegal efforts to obtain operational funds).

45. See Kam C. Wong, "Public Security Reform in China in the 1990s," in *China Review* (Hong Kong: Chinese University Press, 1994), ch. 5, 5.5 to 5.44, esp. 1-5 (PRC police face changes in their mission, values, powers, structure and process in the 1990s).

46. "Circular Regarding Paying Attention to Certain Questions When Cracking Down on Cases of Criminals Committing Crime from Place to Place" (promulgated on December 13, 1989) in *Compendium of Laws*, *supra* note 40, pp. 601-602. (Economic opening and social reform led to a huge increase in population mobility. *Liucuan fan* intermingled with the population and took advantage of the slackened public security control network.) For an excellent account of the social and criminal problems caused by *mangliu*, see generally, *Exodus*, *supra* note 11.

The *mangliu*⁴⁷ are part of a larger floating population (“*renkou liudong*”) who move into and out of the cities for a variety of reasons.⁴⁸ A survey of 74 cities and townships (43 cities and 31 towns) in 1986 showed mass movement of rural people into the cities and towns:

**TABLE 1: PEOPLE MOVING INTO CITIES AND TOWNS
AS A PERCENTAGE OF LOCAL RESIDENCE**

Year	Big Cities*	Small Cities*	Towns
1977-1978	12.5%	12.6%	6.0%
1985-1986	17.0%	23.6%	16.3%

Source: Extracted from *Zhongguo renkou qianyi yu chengshihua yanjiu* (Chinese Population Movement and Urbanization Research) (Beijing: Zhongguo shehui kexueyuan renkou yanjiu suo, 1988), p. 8.

* Big cities include specially big cities and small cities include medium size cities.

The floating population movement was particularly serious for coastal areas (e.g., Guangzhou), industrial cities (e.g., Shanghai), economic zones (e.g., Shenzhen), and transportation hubs (e.g., Beijing), and during certain time of the year, e.g., before and after the lunar new year.⁴⁹ For example, surveys show that the average daily population movement into Shanghai (1988) was 2.09 million; into Beijing (1988) it was 1.31 million; into Guangzhou (1989) it was 1.3 million; and into Wuhan (1990) it was 1.2 million.⁵⁰ Though not all of these people were properly designated *mangliu*, a substantial portion was in fact drifters (“*liulang*”).⁵¹

47. *Mangliu* meaning “blind flow” has come to characterize a significant group of people, mainly young men, who moved in and out of Chinese cities looking for work. See generally Li Mengbai, et al. (ed.), *Liudong renkou dui da chengshi fazhan de yingxiang he duice* (Effects of Floating Population on the Development of Big Cities and Possible Solutions) (Beijing: Jingji ribao chubanshe, 1991), pp. 32-74 (statistical analysis of the problem) [hereinafter “Li Mengbai”]; *Exodus* (humanistic account of the movement), *supra* note 12; Willy Wo, *South China Morning Post*, August 10, 1993, at p. 3.

48. A “floating population” can be defined as those people who have no proper permanent residence (“*hukou*”) and stay in the city to conduct any number of activities from social visits to business to work. See Li Mengbai, *id.*, at p. 6.

49. *Exodus*, *supra* note 11, p. 2.

50. Li Mengbai, *supra* note 47, p. 8.

51. A survey of seven cities in 1989-1990 showed that 7.8% of those who moved into the cities were *liulang* and others who were inappropriate (“*bubian*”) to designate, presumably referring to the undesirable, *id.*, p. 11.

The *mangliu* are predominately male (2.56 male vs. 1 female),⁵² young (61.9% under 35);⁵³ and with lower than average education (33.4% with less than a primary school education.)⁵⁴ They mostly work in manual, temporary and unstable jobs.⁵⁵ They congregate in the center of towns or outside of cities which are dirty and blighted.⁵⁶

The *mangliu's* social milieu,⁵⁷ environmental conditions,⁵⁸ and as a population group is criminogenic.⁵⁹ More problematically, the *mangliu* exist outside the residential registration system.⁶⁰ They destabilize the existing social control system and threaten the conventional normative order. They cause recurring social harms, i.e. deviance, crime and disorder, and pose public security problems, such as riots.⁶¹ They also commit a disproportionate amount of crimes (see Table 2 below).

More significantly, *mangliu* crimes appear to be increasing. In Guangzhou, crimes by *mangliu* grew from 109 in 1983 to 5703 in 1988, an increase of 520%.⁶² Similarly, in Shanghai, *mangliu* criminal arrests as a percentage of total arrests grew from 6.8% (778 arrests) in 1983 to 31.4% in 1989 (5285 arrests), a 4.6 fold increase in relative terms and a 6.8 fold increase in real terms.⁶³ The *mang-*

52. Li Mengbai, *supra* note 47, p. 13.

53. *Id.*, p. 13 (survey of four cities).

54. *Id.*, p. 14.

55. *Id.*, p. 16. (A Beijing survey showed that 94% of such floating population engaged in low skilled service or manual labor.)

56. *Id.*, p. 18.

57. Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969). Four social bonds promote conformity: attachment, commitment, involvement and belief.

58. Clifford R. Shaw and Henry D. McKay, *Juvenile Delinquency and Urban Areas* (Chicago: University of Chicago Press, 1969). Rapid industrialization, increased immigration, and fast urbanization resulted in the disintegration of conventional values and the breakup of established social organizations leading to high crime rates in big cities.

59. Robert Merton, "Social Structure and Anomie," *American Sociological Review*, Vol. 3 (1938), pp. 672-682. (The disjunction between cultural goals [wealth] and structural means [opportunities] resulted in anomie, driving lower class people to commit crime.) See Li Mengbai, *supra* note 47, pp. 56-58 for a discussion of the criminogenic conditions and deviance propensity of *mangliu*.

60. For an excellent discussion of Chinese household registration as a social control system, see generally Michael Dutton, *Policing and Punishment in China* (Cambridge: Cambridge University Press, 1992).

61. Li Mengbai, *supra* note 47, pp. 56-58.

62. *Id.*, at p. 48.

63. *Id.*, at p. 160. The seven years figures were: 1983 (6.8%), 1984 (10.8%), 1985 (11.3%), 1986 (17.8%), 1987 (19.9%), 1988 (29.9%) and 1989 (31.4%).

TABLE 2: MOBILE CRIMINALS AS A PERCENTAGE OF ALL CRIMINALS IN FOUR MAJOR CITIES IN CHINA

Cities	Date	Mobile criminals as a % of total criminals
Hangzhou	Jan. - Nov., 1989	90.0%
Guangzhou	1989	57.9%
Shanghai	1989	31.4%
Tienjin	Jan. - July, 1989	23.0%

Source: See Li Mengbai, *supra* note 47, p. 49.

liu criminals are also disproportionately involved in more serious crimes. In 1989, *mangliu* criminals were responsible for 1/3 of all robberies, 1/8 of all murders, and 2/3 of all serious fraud and misrepresentation cases in Shanghai.⁶⁴

From a social control policy perspective, the *mangliu* live at the fringe of the society and at the expense of the local communities. They are populated with petty thieves, hooligans, gamblers, drug addicts and prostitutes.⁶⁵ They are in need of continuous supervision, comprehensive regulation and tight control. *Shoushen* came to the rescue as an all purpose crime fighting and social control device. *Shoushen* was used in the 1980s as a stop gap measure between the failing traditional social control networks and the nascent criminal justice system. The measure was borrowed by the Ministry of Public Security to deal with "those who resided in the village and came to commit crimes in the cities, along the railway, and large factories and mines."⁶⁶ Increasingly, *shoushen* was used to extend the reach of the traditional rural social control network into the urban centers, by bringing some semblance of administrative control to an otherwise unruly mobile crowd.

D. State Release (1980) 56

The growing use of *shoushen* as an administrative social control and crime fighting measure prompted the CPC Central Com-

64. *Id.*

65. *Id.*

66. "Report Regarding Perfecting Labor Education Work (Summary)" in *Labor Education Cases*, *supra* note 14, pp. 11-16. (Calling for the expeditious handling of itinerant criminals; instructing against prolonged investigations and advising against requiring unnecessary proof; calling for measures to prevent suspected itinerant criminals from escaping and committing more crimes; allowing for the uninterrupted investigation of suspects; and, providing for the work, education and reform of a group of economically displaced *mangliu*.)

mittee and the State Council to issue the "Circular on Combining Forced Labor and Sheltering for Examination into Re-education" on February 19, 1980, providing for the placement and treatment of the *shoushen* persons in the re-education camps.⁶⁷ In the process, State Release (1980) 56 defined the permissible scope and jurisdictional reach of *shoushen* and set forth some *minimal* guidelines for its use. Fundamentally, the Release addressed itself to the question, which had thus far escaped serious attention, of who the intended targets of *shoushen* were. Paragraph two of the State Release (1980) 56 provided that *shoushen* should be used:

With respect to those who have committed minor legal violations or criminal conduct and who do not give their true names, addresses, or are with unknown origin, or those who have committed minor legal violations and criminal conduct, and are suspected of committing crimes from place to place, or repeatedly, or in group and need to be detained for further investigation.

State Release (1980) 56 has been interpreted to require that two separate conditions be met before *shoushen* can be allowed. First, the *shoushen* person must have committed a *minor* legal violation or criminal conduct ("weifa fanzui xingwei"). This would exclude the use of *shoushen* to deal with serious criminals.⁶⁸ Second, the *shoushen* person must belong to any one of the following five categories: (a) one who does not give a true name or address; or, (b) one who is without a known origin ("laili buming"); or, (c) one who is suspected of committing crimes in different places ("liucuan zuoan"); or, (d) one who is suspected of committing crimes repeatedly ("duoci zuoan"); or, (e) one who is suspected of committing crimes in a group ("jieshe zuoan").⁶⁹

All *shoushen* subjects are to be processed at *shouren* farms specially established for such a purpose in respective provinces, autonomous regions, and cities. There are no separate facilities for

67. State Release (1980) 56, *supra* note 2.

68. State Release (1980) 56 also provides that, for "those who will not cause serious harm to society, the measures of awaiting trial on bail, living under surveillance as stipulated in the PRC Criminal Procedure Law" should be used. *Id.* Whether the "harmful in society" requirement is a complementary or independent consideration is an issue yet to be resolved.

69. See "Case 104: Liu Jiaqiang vs. Public Security of a Certain City" in *Xingzheng peichang anli xuanping* (Selection of Administrative Compensation Cases) (Beijing: Zhongguo renmin gongan daxue chubanshe, 1992), pp. 179-84 [hereinafter "*Compensation Cases*"].

shoushen at the local level. The labor-education farm is to be supervised and administered by a labor-reform committee which is staffed with people from the civil administration, public security and labor departments.⁷⁰

State Release (1980) 56 is significant in two respects. First, coming from the State Council, it serves as the administrative “empowering” regulation for *shoushen* and is cited as such.⁷¹ Although State Release (1980) 56 does not confront directly the issue of legality of *shoushen*, it nevertheless makes provisions for the placement of *shoushen* persons. In so doing, it *formally* and *openly* legitimizes the use of *shoushen* to deal with *liucuan* criminals. Second, it provides, for the first time, a clearly articulated operational definition of *shoushen* power, i.e., to whom it applies, when it is to be used, and how it is implemented. It clarifies the scope of the *shoushen* power and places limits on its use. It further functions as a jurisdictional benchmark for the self-regulation and external control of its exercise.

However, State Release (1980) 56 leaves many questions unanswered: What is the legal foundation of *shoushen* power? Is it a criminal or an administrative measure? How is the measure to be reconciled with other existing police powers to investigate, detain and arrest?⁷² Which investigative measure is to be preferred when alternative measures are available, as in the case with petty offense criminals? If alternative measures can be used, how can such discretionary use of powers be properly controlled?⁷³

E. Public Security Report (1985) 50

In 1985, the Ministry of Public Security released a policy report on the status of *shoushen*.⁷⁴ The Report observed that *shoushen* had been inappropriately used in the past 20 years as a substitution

70. *Labor Education Farm*, *supra* note 28.

71. “Circular Regarding Certain Questions on the Thorough Implementation of the PRC Administrative Procedure Law.” Before the promulgation of a new sheltering for examination law, the public security is to follow State Release (1980) 56 in *Restrictive Interpretations II*, *supra* note 4, pp. 45-49, item 3 “On the Question Regarding the Reconsideration of the Determination Basis for Sheltering for Examination.”

72. These include investigative detention (“*juli*”); arrest (“*daibu*”) or detention pending formal charging; criminal detention for minor offenses (“*juyi*”); reform through labor (“*laodong gaizao*”), administrative detention (“*xingzheng juli*”), and reeducation and rehabilitation through labor (“*ladong jiaoyang*”). For a discussion, see Hsia and Zeldin, *supra* note 16, pp. 24-27.

73. See Chen & Zhang I, *supra* note 5.

74. Public Security Report (1985) 50, *supra* note 4.

for investigation (“*dai cha*”), adjudication (“*dai shen*”) and punishment (“*dai xing*”).⁷⁵ In response, the Ministry of Public Security promulgated Public Security Report (1985) 50 defining *shoushen* and detailing procedural guidelines for its use. Specifically, it provides that:

1. *Shoushen* should only be used against criminals who commit crimes in different places and criminal suspects who would not disclose their true names, addresses, places of origin, and background. It should not be used against local offenders when their status is unmistakable or evidence clearly established so.
2. *Shoushen* should only be approved by the county level public security party section or party committee.
3. *Shoushen* subjects must be questioned within 24 hours. The family and working unit (“*danwei*”) of the *shoushen* subject must be informed within 24 hours of the reasons and location of *shoushen*.
4. The *shoushen* examination must be completed within one month. If the case is too complicated or involves inter-provincial or inter-regional crime, the period can be extended, with the approval of the higher level public security, for another month. If further extension is required, permission must first be obtained from the public security bureau or department at the province, autonomous region, and independent municipality under the Central Government level. The maximum period of *shoushen* should not exceed three months. The time for calculating the *shoushen* period for a suspect who refuses to give his name or address starts to run when his true name and address are established.
5. *Shoushen* should be based on investigation and evidence. Hitting, yelling, insult, and torture are not allowed.
6. *Shoushen* persons enjoy civil rights as guaranteed by the PRC Constitution and laws. A *shoushen* person is to be separated from regular criminals. The *shoushen* authority is held strictly accountable to law and discipline. The *shoushen* person and his relatives have a right to complain and prosecute any violation of the *shoushen* person’s rights.

75. *Id.*

7. *Shoushen* persons should be given adequate food and lodging just like any local residence.
8. *Shoushen* persons who are found guilty of criminal responsibilities are to be processed according to the PRC Criminal Procedure Law. If they should require labor education or administrative sanction, they should be treated accordingly. In cases of wrongful detention, the mistake should be openly acknowledged and steps taken to ameliorate any adverse consequences (“*shanhou gongzuo*”).
9. The people’s procuratorate is responsible for *shoushen* supervision.

Public Security Report (1985) 50 was, and still is, the most comprehensive administrative regulation of *shoushen* issued. It replaced all other circulars, instructions, decisions and notices on the subject matter of *shoushen* issued by national or local public security organs, e.g., it superseded the “Circular Regarding Reorganizing and Strengthening Accepting for Examination Work of *Liucuan* Offenders” of November 1, 1978.⁷⁶

Public Security Report (1985) 50 has since been accepted as the de facto “administrative procedure” for *shoushen*. It has been made applicable to numerous government organs.⁷⁷ It has been referenced by the NPC Standing Committee,⁷⁸ adopted by the people’s procuratorate,⁷⁹ cited by the people’s courts,⁸⁰ and accepted by legal scholars.⁸¹

76. *Id.* Art. (9) provides that “All previous other circulars and instructions from the Ministry of Public Security or local public security organs are void if found in contravention of this circular.”

77. “Official Reply to Report Requesting for Instruction Regarding How Railways [Public Security] Can Extend Sheltering for Examination Period for Subjects of Examination” (promulgated on October 16, 1985) in *Encyclopedia*, *supra* note 22, p. 879.

78. Jiangxi Province Answers, *supra* note 4.

79. “Guanyu renmin jianchayuan zhijie shouli zhencha de tanwu, huiluo, qinquan, duzhi deng fanzui anjian bushiyong shoushen de tongzhi” (Circular Regarding Not Using Sheltering for Examination for the Crimes of Corruption, Bribery, Infringement of Rights, and Dereliction of Duty Cases Directly Investigated by the Supreme People’s Procuracy), *Zhongguo falu nianjian* (Law Yearbook of China) (Beijing: Zhongguo falu nianjian: 1991), p. 623.

80. See discussion of court cases in Part III, *infra*.

81. Chen Weidong & Zhang Tao, “Zai tan shouron shencha buyi feichu” (Further Discussion on the Taking-in for Examination System Must Not Be Abolished) in *Zhongguo faxue*, 3/1993, p. 113 [hereinafter “Chen & Zhang II”].

Public Security Report (1985) 50 continues to fuel debate over the nature, scope, interpretation and constitutionality of the measure. The major issues are: (1) whether *shoushen* is an administrative or criminal law power and, (2) whether there is a need to provide for a separate “administrative” detention power beyond those “coercive powers” (“*qianzhi*”) provided by the PRC Criminal Procedure Law of 1979?⁸²

State Release (1980) 56 and Public Security Report (1985) 50 differ in one important respect: the definition and scope of *shoushen*. Under State Release (1980) 56, *shoushen* only applies to *petty offense* criminals; under the Public Security Report (1985) 50 *shoushen* applies to *any* criminal.⁸³ The difference however has never been resolved and both State Release 1980 (56) and Public Security Report 1985 (50) have often been quoted by judicial authorities without drawing a distinction.⁸⁴

On March 2, 1989, the Jiangxi Province People’s Congress asked the NPC to render an opinion on the question of whether a county people’s congress member can be subject to sheltering for examination by the county people’s procuratorate.⁸⁵ The NPC

82. Wang Xinxin, “Shoushen zhidu yingyu feichu” (The Taking-in for Examination System Must Be Abolished) in *Zhongguo faxue*, 3/1993, p. 110; Chen & Zhang II, *supra* note 81.

83. Chen & Zhang II, *supra* note 81.

84. None of the recorded legal, administrative, and judicial documents I came across draw a distinction between the two. None of the selected cases discussed in this paper point out the difference. For example, in Case 9, The Anhui Province, Guzheng County People’s Court, in ruling favorably for Wang Cuihan and against the public security, referenced both State Release (1980) 56 and Public Security Report (1985) 50 without drawing a distinction. They were treated as complementary to each other. See Case 9, *supra* note 1, p. 1187. See also “Tian Zhongfu bufu Jia Mu Shi gonganju Qian Jin Qu gongan fenju dui qi shouron shencha jue ding an” (The case of Tian Zhongfu resisting Jia Mu Shi municipal public security bureau, Qian Jin district public security branch office’s sheltering for examination decision) in Supreme People’s Court & Chinese Applied Legal Science Research Institute (ed.), *Renmin fayuan anli xuan* (Collection of People’s Court Cases) (Beijing: Renmin fayuan chubanshe [serial]) [hereinafter “*Court Cases*”] 4/1996, pp. 160-167; Case no. 41: “Hong Jizhen deng xu Yibin gonganju weifa dui shouron shencha an” (The case of Hong Jizhen and others suing Yibin public security bureau for illegal sheltering for examination). *Id.*, 2/1993, pp. 181-186 [hereinafter “Case 8”] in which the court relied on State Release (1980) 56 to determine the jurisdiction and Public Security Report (1985) 50 to determine the procedure.

85. See question 6 to “Xian renmin jianchayuan kefou dui yao fanzui xingwei de xian rendai daibiao caiqu shouron shencha” (Whether a county people’s congress member who committed criminal conduct can be sheltered for examination?) in Jiangxi Province Answers, *supra* note 4.

Standing Committee provided, for the first time,⁸⁶ some revealing interpretations of the *shoushen* power. The NPC Standing Committee observed that "according to law, the people's procuratorates have no *shoushen* authority."⁸⁷ In any event, it is inappropriate ("buyi") for county level people's congress members to be *shoushen*. More specially, people's congress members who have committed economic crimes ("jinji fanzui") are "not within the scope of *shoushen*."

The Jiangxi Province Answers are significant for three reasons. First, it is the first time the NPC has openly accepted *shoushen* as a proper exercise of police power. Second, the NPC cited Public Security Report (1985) 50, instead of State Release (1980) 56, as the more appropriate *shoushen* legal rule. Third, it set forth clear limitations to the use of *shoushen*: it can only be employed by the police and it does not apply to people's congress representatives committing economic crimes. The Jiangxi Province Answers started an irreversible process in retracting some of the more expansive and expanding *shoushen* power enjoyed by the police through historical needs and contemporary neglect.

Fittingly, the decade closed with the Ministry of Public Security, Supreme People's Procuracy and Supreme People's Court issuing the "Circular Regarding Certain Questions on the Handling of

86. *Id.* Until now there was an officially imposed silence on the subject. See "Guanyu buyi gongkai baodao shouron shencha de tongzhi" (Circular Regarding the Inappropriateness of Public Announcement of Sheltering for Examinations) (promulgated on January 27, 1987) (It is inappropriate for the police to comment upon or for the press to report on *shoushen* investigations) in *Encyclopedia, supra* note 22, p. 839; "Guanyu shouron shencha xunchuan wenti qingshi" (Request for Instruction on Questions Regarding Sheltering for Examination Propaganda) (Guangxi Zhuang Autonomous Region was advised to delay the public release of details of *shoushen* until the legal process had been settled. The press should be informed that *shoushen* is not the same as criminal detention, labor education, or social security arrest. It is not a measure established by law, but is authorized by the State Council and Ministry of Public Security.) *Zhongguo susong zhidu falu quanshu* (A Comprehensive Treatise on Chinese Litigation System) (Beijing: Falu chubanshe, 1992), pp. 1159-176, p. 1424 [hereinafter *Litigation System*].

87. The NPC Standing Committee articulated a much broader rule than was necessary to settle the issue before it. First, instead of limiting itself to the facts of the case, the Standing Committee fashioned an all-encompassing *shoushen* rule applicable to the people's procuratorate as well as the public security. Second, instead of finding that *shoushen* did not apply to a people's congress member, it banned the use of *shoushen* against people's congress members in *all* economic crime cases.

Itinerant Criminal Cases”⁸⁸ [hereinafter “Circular I”] on December 13, 1989, clarifying the definition of “itinerant criminal.” Itinerant criminals are people who: (1) commit a series of crimes across the city and county jurisdiction; or, (2) commit crimes in their place of residence but escape to other cities and towns to commit more crimes. Itinerant criminals do not include those who are bona fide visitors or border residents committing occasional cross-border crimes.⁸⁹

Circular I further acknowledged the compelling needs and attending difficulties in investigating, arresting, prosecuting, proving and adjudicating cases involving itinerant criminals. It called for the arrest and prosecution of itinerant criminals when the fundamental facts are clear and basic evidence exists. Circular I captured the gist of the problem confronted by the police in regulating *shoushen*: how to strike a balance between flexibility (to deal with a mobile criminal) and accountability (to keep police powers in check) in controlling an intractable crime problem.⁹⁰

F. Limitations on *Shoushen* in the 1990s

In the 1990s, the Chinese government has showed heightened interest in curbing the abusive uses of *shoushen*.⁹¹ The strategy is to limit the use of *shoushen* by adopting “bright line” rules, e.g., *shoushen* should not be used under any circumstances in commercial disputes.⁹² On September 8, 1990, the Ministry of Public Se-

88. “Guanyu zai daji liucuan fanzui huodong zhong xuyao zhuyi jige wenti de tongzhi” (Circular Regarding Certain Questions on the Handling of Itinerant Criminal Cases) in *Compendium of Laws*, *supra* note 40, pp. 601-602.

89. *Id.*, p. 601.

90. Xu Youjun, “Zhongguo xingshi susong yu renquan” (Chinese Criminal Procedure and Human Rights) in *Zhongwai faxue* (Chinese and Foreign Legal Science), 2/1992, pp. 38-43. (Tension exists between protecting individual rights and advancing social welfare.)

91. See Yang Yichen, “Zuigao renmin jianchayuan gongzuo baogao” (The Supreme People’s Procuratorate Work Report) (promulgated on April 1, 1988) in *Zhongguo jiancha nianjian* (1990) (Procuratorial Yearbook of China (1990)), pp. 21-28; “Quanguo jiancha jiguan diyici” “qinquan” duzhi anjian shencha gongzuo huiyi” (First National Procuracy Meeting on “Rights Violation” and Dereliction of Duty, held in Beijing from April 3-9, 1990) in *Law Yearbook of China* (1991), p. 802; “Quanguo jiancha jiguan dierci” “qinquan” duzhi anjian shencha gongzuo huiyi” (Second National Procuracy Meeting on “Rights Violation” and Dereliction of Duty, held in Beijing from May 18-23, 1991), *Law Yearbook of China* (1992), p. 802.

92. “Guanyu gongan jiguan bude feifa yuequan ganyu jingji anjian de chuli tongzhi” (Circular Regarding the Fact that Public Security Organs Should not Interfere Illegally with Commercial Dispute Cases) in *Restrictive Interpretation II*, *supra* note 4, at p. 22

curity, Supreme People's Procuracy and the Supreme People's Court issued "Circulation of Notice Regarding the Situation of Illegal Detention Cases in Commercial and Trade Activities"⁹³ [hereinafter "the Commercial Notice"] which captured the stark reality and summed up the prevailing sentiment against the extra-legal use of *shoushen* in commercial cases. The Commercial Notice after citing 12 reported cases⁹⁴ of illegal detention from Shenzhen, Guangdong Province in 1989 observed:

As a result of the untimely handling of such [commercial] cases, the offenders were allowed to escape the law. The victims who have their legal interests violated were compelled to use illegal kidnapping and false imprisonment for

(circular issued by the Minister of Public Security in April 1989, strictly forbidding public security organs from using *shoushen* and other forms of detention to interfere with commercial disputes); "Guanyu chachu zai shangmao huodong zhong yi bangjia, kouliu renzhi deng fangfa bihuan zhaiwu feifa jujin taren de anjian tongbao" (Notice Regarding Investigating and Handling Cases of Illegal Detention and Using Kidnapping and Holding Hostages to Coerce Repayment of Debts in Commercial Activities) (the Supreme People's Procuracy reinforces the general theme of April 1989 public security circular), *id.*; "Gonganbu guanyu yanjin gongan jiguan chashou kingji doufen weifa zhuaren de tongzhi" (Ministry of Public Security Notice Regarding Strictly Forbidding Public Security Organs in Interfering with Economic Disputes and Illegally Detaining People) (promulgated on April 25, 1992), *Zhongguo jingcha falu fagui guizhang shiyi daquan* (Compilation of Interpretations of Chinese Police Laws, Regulations and Rules) (Beijing: Zhongguo jingguan jiaoyu chubanshe, 1993), pp. 1327-1328. (The police are to stay away from commercial disputes and never to use *shoushen* in commercial cases or against foreigners.) [hereinafter "*Compilation of Police Laws*"].

93. "Guanyu zai shangye maoyi zhong fasheng feifa jujin anjian qinquan de tongzhi" in *Restrictive Interpretation II*, *supra* note 4, at p. 22, item 3 [hereinafter "Commercial Notice"].

94. A typical case of police intervening in commercial disputes, as reported in the Commercial Notice, was the case of Xue Keming ("Xue") illegal detention. In December 1987, Xue contracted with Ford Company of Shenzhen City ("Ford Co.") for the manufacturing and purchase of 10,000 refrigerators. Xue deposited 4.3 million RMB with the Ford Co. A company executive absconded with the money. In June 1988, Xue sued the Ford Co. for the return of the money in Shenzhen People's Court. After hearings by the Shenzhen and Guangdong courts the Ford Co. was ordered to pay 4.36 million RMB on December 25, 1988. In March 1989, Xue wrote the Wuhan city public security, seeking assistance in executing the judgment from Liu Liran (Liu), the manager of the holding company of Ford Co. On March 29, 1989, four Wuhan police officers (the branch chief Song and three officers) went to Shenzhen to pursue the debt matter. Their action was approved by the Wuhan public security leadership. They did not notify the local police. On April 3, 1989, Xue lured Liu out from his residence to be arrested by the Wuhan police officers. Liu was secretly transported to Wuhan, and detained in the Hubei Province Economic Bureau Visitors' Center and was kept under surveillance by four members of the State Trading Company. On April 14, 1989 Liu managed to escape and returned to Shenzhen.

ransom to secure the return of their money. There were also cases when the economic disputes were settled by the court but the judgments were not executed, causing a few persons to take illegal measures to resolve the problem. There were also some local public security and procurators who exceeded their legal authority by unilaterally protecting local economic interests in the handling of economic dispute cases. They treated what should have been commercial disputes as economic crimes and used illegal detention to help certain work units or individuals to collect their debts. These practices violate state laws and party discipline. They severely interfere with the citizens' personal freedom and destroy the normal functioning of the economic order. The public security organs, procurator offices, and courts should pay special attention and adopt effective measures to prevent and rectify the problem.⁹⁵

On November 6, 1990, the Ministry of Public Security further expounded on the abusive use of *shoushen* process in commercial cases in the "Circular Regarding Realistically Correcting Inappropriate Style of Public Security Organs in Handling Swindling of Goods and Money Cases"⁹⁶ [hereinafter "Circular II"]. Circular II noted that the public security bureaus have long violated their legal authority by interfering with commercial disputes, including treating commercial disputes as economic crimes; resorting to illegal process to seize private assets; using *shoushen* to coerce repayment of debts; catering to local economic interests in refusing to cooperate with other public security agencies; and, engaging in *shoushen* across jurisdictional boundaries. They practiced *shoushen* in lieu of investigation ("yi shou dai zhen") and imposed fines instead of legal punishment ("yi fa dai xing").

Circular II admonished the public security bureaus to correct inappropriate work style in the handling of economic crime cases

95. *Id.* See also "Guo Debing bufu Xinjian Jinghexian gonganju shouron shencha jue ding an" (The Case of Guo Debing Refusal to Accept the Sheltering for Examination Determination of Xinjian Province, Jinghe County Public Security Bureau. (Jiangsu Province, Nantong County People's Court (1990) in *Adjudicated Cases*, *supra* note 1, p. 1177 [hereinafter "Case 7"]).

96. "Guanyu qieshi jiuzheng gongan jiguan banli zhaphan caiwu anjian zhong de buzheng zhifeng de tongzhi" (Circular Regarding Realistically Correcting Inappropriate Style of Public Security Organs in Handling Swindling of Goods and Money Cases), (November 6, 1990), *Restrictive Interpretation II*, *supra* note 4, pp. 103-106.

by: (1) doing away with “*yi fa dai xing*”; (2) clearly separating economic crimes and commercial disputes; (3) ceasing the abusive use of *shoushen*; (4) obeying the scope and time limits set forth by the State Release (1980) 56 and Public Security Report (1985) 50; (5) handling cases based on investigation and evidence; and, (6) cooperating with the local public security when handling cases outside of one’s jurisdiction bureau.⁹⁷

The 1990s witnessed a progressive tightening of control over the use of *shoushen*. For example, on March 21, 1990, the Supreme People’s Procuracy issued the “Circular Regarding Not Using *Shoushen* for the Crimes of Corruption, Bribery, Infringement of Rights, and Dereliction of Duty Cases Directly Investigated by the Supreme People’s Procuracy.”⁹⁸ This circular *categorically* prohibited the use of *shoushen* in cases involving corruption, bribery, infringement of rights, and dereliction of duty. *Shoushen* did not apply to cases of bribery, corruption, infringement of rights and dereliction of duty because these offenses were usually committed by state officials whose identities were clear and addresses were known and who were not likely to escape investigation.

In May 1990, the Minister of Public Security issued “Regarding the Publication of Important Points from the National Public Security Legal System Meeting,”⁹⁹ admonishing public security bureaus at all levels not to exceed the legal scope or time limits of *shoushen*. The aggrieved *shoushen* person can appeal to the next level of public security authority for administrative review of *shoushen* decisions. However, such administrative appeal does not interfere with the on-going *shoushen* process, unless otherwise required by the PRC Administrative Procedure Law.¹⁰⁰

97. *Id.*

98. “Guanyu renmin jianchayuan zhijie shouli shencha de tanwu, huiluo, qinquan, duzhi deng fazui anjian bushiyong shouron shencha de tongzhi” (Circular Regarding Not Using *Shoushen* for the Crimes of Corruption, Bribery, Infringement of Rights, and Dereliction of Duty Cases Directly Investigated by the Supreme People’s Procuracy) in *Law Yearbook of China*, 1991, p. 623.

99. “Guanyu yinfa Quanguo gongan fazhi gongzuo huiyi jiyao” (Public Security Release (1990), No. 10 document) (promulgated in May, 1990) referenced in item 3 of “Guanyu shouron shencha de pifu he fuyi wenti” (Issues Concerning the Basis for Approving and Reviewing of Sheltering for Examination) in “Guanyu gongan jiguan guanche shishi “Xingshi susong fa” rugan wenti de tongzhi” (Notice Regarding Certain Questions on the Thorough Implementation of the “Administrative Procedure Law”) in *Compilation of Police Laws*, *supra* note 92, p. 964.

100. Art. 44 of PRC Administrative Procedure Law gives the court the power to suspend *shoushen* upon request by the plaintiff on the basis of irreparable harm to the *shouron* person and no ascertainable harm to society.

In 1991, the Ministry of Public Security issued "Circular Regarding Further Steps to Exercise Serious Control over the Use of *Shouron Shenchu* Measure."¹⁰¹ The circular admonished the public security organs to follow strict procedure in *shoushen* cases, including: examining *shoushen* subjects within the first 24 hours, releasing those *shoushen* subjects found not to be appropriate subjects and keeping *shoushen* subjects for no more than three months.

The latest trend in controlling the wrongful use of *shoushen* is through administrative law.¹⁰² The PRC Constitution (1982) provides a cause of action against administrative wrongdoing.¹⁰³ The Administrative Procedure Law of the PRC¹⁰⁴ [hereinafter "PRC APL"] allows an aggrieved person to sue the government for administrative wrongdoing. Art. 2 gives citizens the right to sue in the court when their legal rights are violated by administrative action. Specifically, under the PRC APL, art. 11, a person can file a complaint challenging any coercive measures which deprive him of liberty or restrict his freedom.¹⁰⁵ The Supreme People's Court has since issued "Comments on Certain Questions Regarding Resolute

101. "Guanyu jinyibu kongzhi shiyong shouron shenchu shouduan de tongzhi" (Circular Regarding Further Steps to Exercise Serious Control over the Use of *Shouron Shenchu* Measure.) (Public Security Report (1991) No. 37 document) cited in Case 10, *infra* note 107.

102. Wang Liming, "Lun wanshan qinquanfa chuangujian fazhi shehui de guanxi" (A Discussion on the Relationship between Perfection of the Law of Tort and Building a Legal Society), *Faxue* (Legal Science), 7/1992, pp. 14-19.

103. Art. 41(3) of the PRC Constitution provides: "Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law." Translated in *Constitution of the PRC and Amendments to the Constitution of the PRC* (Beijing: Legislative Affairs Commission of the Standing Committee of the NPC, 2d ed., 1990), p. 11 [hereinafter "Constitution"].

104. "Zhonghua renmin gongheguo xingzheng susong fa" (Adopted at the Second Meeting of the Seventh NPC on April 4, 1989, promulgated by Order No. 16 of the Chairman of the PRC on April 4, 1989, effective October 1, 1990).

105. Under art. 11 of the PRC APL, a citizen can file a complaint against an administrative organ when: (1) he refuses to accept an administrative punishment; (2) he refuses to accept coercive measures; (3) his autonomous right to engage in business is infringed upon; (4) his application for a permit or a license is denied, refused or not attended to; (5) his request for the protection of persons and property rights is refused or not answered; (6) his pension fund (pension) is withheld; (7) he is asked to assume illegal responsibility; or (8) his personal and property rights are infringed upon by administrative actions. See *Zhonghua renmin gongheguo baifa shijie anlie quanshu* (Explanation and Cases of 100 PRC Laws) (Changchun: Jilin renmin chubanshe, 1993), pp. 1077-1129, 1078 [hereinafter "100 PRC Laws"].

Execution of PRC Administrative Law”¹⁰⁶ providing for judicial review of *shoushen* decisions.

For example, in one case, a city court relied on the PRC APL to set aside a *shoushen* order and award damages for economic losses suffered by the complainant.¹⁰⁷ In October 1988, the public security bureau of a particular city was engaged in an investigation involving fraud of electronic merchandise (valued at 4.8 million RMB). A salesperson from another city, Zhang Ping (“Zhang”), was a primary suspect. Zhang was placed under *shoushen* on November 21, 1990 for economic fraud. While he was in custody, Zhang was assaulted by his cell mate. On December 6, 1991, Zhang was released due to insufficient evidence. Zhang’s working unit declined to pay him the 115 RMB in wages and 33.3 RMB in incentive allowances, which he would have earned had he not been in custody.

In January 1991, Zhang filed a complaint with the People’s Court. The court agreed that Zhang was subject to *shoushen* in violation of art. 2 of State Release (1980) 56. Zhang was awarded administrative relief and compensatory damages under art. 67 (3) of PRC APL. The court also ordered the investigating public security bureau to acknowledge wrongdoing and apologize to Zhang, visit his working unit to rehabilitate his reputation, compensate him for lost wages and incentive pay in the amount of 448.5 RMB, compensate him for mental anguish in the amount of 320 RMB, and compensate his wife for travel and lodging expenses in the amount of 100 RMB.¹⁰⁸ This case is an excellent example of how public security organs must now be aware of judicial oversight of *shoushen*.

Finally, the People’s Supreme Procuratorate raised once again the controversial nature and ambivalent legal status of the *shoushen* in an official reply to an inquiry from the Guangdong Province, regarding whether an escaped *shoushen* person should be prosecuted as an escapee under the PRC Criminal Law.¹⁰⁹ The PRC

106. “Guanyu guanche zhixing ‘Zhonghua Renmin Gongheguo xingzhen susong fa’ rugan wenti de yijian (shixing)” (Comments on Certain Questions Regarding Resolute Execution of PRC Administrative Law) in *Zhonghua renmin gongheguo gongan falu quanshu* (Compendium of PRC Public Security Laws) (Jilin: Jilin chubanshe, 1995), pp. 1404-1411.

107. *Compensation Cases*, *supra* note 69, Case 82 “Illegal *shoushen* should be compensated,” pp. 141-143 [hereinafter “Case 10”].

108. The Court further decided that Zhang’s injury while in custody was unrelated to the *shoushen* action and should be separately pursued. *Id.*

109. “Guanyu shouron jiancha renyuan de taopao xingwei shifou zhuixu wenti de pifu” (Official Reply Regarding the Question of Whether the Escape Conduct of Shel-

Criminal Law, art. 161, provides that "a criminal [who] escapes after being arrested or held in custody according to law" will receive an additional sentence on top of that of his original offense. The Supreme People's Procuratorate affirmed that a *shoushen* escapee should be prosecuted and punished just like any other escapees,¹¹⁰ but opined that further prosecution and additional penalties are only warranted for a *guilty* escapee, not an innocent one.¹¹¹

III. LEGISLATIVE RESPONSES TO *SHOUSHEN* IN 1996

On February 28, 1995, the Law on People's Police of the PRC [hereinafter "PRC Police Law"] became the law of the PRC.¹¹² The PRC Police Law effectively replaced the People's Police Act of the PRC of 1957.¹¹³ The PRC Police Law reflected a continuous effort by the PRC political and public security leadership to address the public's concerns with police abuse of powers by regularizing police operations.¹¹⁴ The PRC Police law seeks to provide a legal framework for the proper exercise of police powers. In particular, the PRC Police Law allows the police to interrogate people who are suspected of having committed a crime. It authorizes the police to

tering for Examination Persons Should Be Prosecuted) in *Zhonghua renmin gongheguo jiancha yewu quanshu* (Comprehensive PRC Procuratorate Business Manual) (Changchun: Jilin renmin chubanshe, 3/1990), p. 1171.

110. The Supreme People's Procuratorate reply used "buyi yi tuotaozui zhuisu" which is literally translated as "it is *inappropriate* to prosecute an escape offense." It should be noted that the phrase "buyi" (inappropriate) is permissive in nature, and allows decision-makers certain discretion as to what charge to file. This is distinguishable from "yinggai" (should be) which is an imperative term.

111. One possible explanation for the subtle distinction is that innocence is a defense against escape from official (*shoushen*) custody. This explanation runs against art. 161 of PRC Criminal Law of 1979 which provides that escape from "custody" is an unconditional offense. Art. 161 draws no distinction between escaping *shoushen* suspects or arrested criminals. Another plausible explanation is that *shoushen* is not "quite" legal, and the citizen has a right to resist unlawful deprivation of freedom, on self-defense grounds, albeit at one's own risk.

112. See PRC Police Law, *supra* note 6.

113. "Zhonghua renmin gongheguo renmin jingcha tiaoli" (passed at the 76th meeting of the Standing Committee of the NPC on June 25, 1957 and promulgated by the Chairman of the PRC on June 25, 1957.) For the Chinese text, see Yan Li, *Gongan paichusuo yewu quanshu* (A Comprehensive Manual for Public Security Post) (Beijing: Zhongguo renmin gongan daxue chubanshe, 1994), pp. 520-521. For an English translation, see Alan Cohen, *The Criminal Process in the PRC, 1949-1963* (Cambridge, Mass: Harvard University Press, 1968), pp. 107-8.

114. "Wuo guo gongan fazhi tixi ri qu wanshan" ("The Structure of Our Public Security Legal System Is Progressively Improving") in *Renmin gongan bao* (People's Public Security Post), Nov. 1, 1991, p. 1.

take people into custody for continued investigation. It provides that, except under special circumstances and with the approval of the public security organ above the district level, no person may be held in investigative custody for more than 24 hours. Even under special circumstances, investigative custody should not last more than 48 hours.

The final chapter to the *shoushen* saga was written in 1996. On March 17, 1996 the NPC adopted the PRC Criminal Procedure Law of 1996¹¹⁵ to promote socialist legality as well as to protect people's rights.¹¹⁶ The PRC Criminal Procedure Law of 1996, while not mentioning *shoushen* by name, effectively placed all public security coercive measures, including *shoushen*, under one unified procedural control scheme. Hence, the public security organs "must strictly observe this law and relevant provisions" in investigating, arresting and detaining suspects.¹¹⁷

Jurisdictionally, art. 61 of the PRC Criminal Procedure Law of 1996 specifically authorizes the public security organs to detain an active criminal or major suspect under the following circumstances:

- (6) If he does not reveal his true name and address or his identity is unclear;
- (7) If there is strong suspicion that he is a person who goes from place to place committing crimes, who repeatedly committed crimes; or who ganged up with others to commit crimes.

The above jurisdictional provisions echo the *shoushen* language in the State Release (1980) 56¹¹⁸ and Public Security Report (1985) 50.¹¹⁹ These provisions are a major departure from the past administrative policies and regulations dealing with *shoushen*.¹²⁰ By so doing, the NPC clearly and unequivocally manifests its intent to eradicate *shoushen* as a distinctive police investigative power by incorporating it into the overall regulatory scheme of the PRC Criminal Procedure Law of 1996.

Procedurally, the PRC Criminal Procedure Law of 1996 provides clear and explicit guidelines for investigative detention. It

115. See PRC Criminal Procedure Law of 1996, *supra* note 7.

116. See art. 2 and art. 14 of the PRC Criminal Procedure Law of 1996.

117. See PRC Criminal Procedure Law of 1996, Chapter 1, art. 3, paragraph 3.

118. See notes 68 and 69, *supra*, and text thereto.

119. See Part II "E. Public Security Report (1985) 50" on "*Shoushens* targets," *supra*.

120. See Part II "History of *Shoushen*," *supra*.

prescribes the jurisdictional limits for investigative detention (art. 61), procedure for detention (art. 64), procedure during detention (art. 65), procedure for release (art. 65), procedure for arrest (art. 69), procedure for extension of detention (art. 69) procedure for challenging illegal detention (art. 75) and procedure for oversight (art. 76). More specifically, under the Criminal Procedure Law of 1996, all investigative detention must be accompanied by a detention warrant.¹²¹ The police, except in exceptional cases, must inform the detainee's family or work unit of his arrest within 24 hours.¹²² The procedure during an investigative detention is strictly prescribed by art. 65:

The public security organ should conduct interrogation of the detained person within 24 hours after detention. When it is discovered that he should not have been detained, the detained person must be released immediately and be issued a release certificate.¹²³

Specifically, the PRC Criminal Procedure Law of 1996 provides strict time limits to guide the proper exercise of, and in turn effective supervisory control over, investigative detention powers. Investigative detention, under normal circumstances, should last no more than 72 hours, at which time a formal request for arrest approval should be made to the procuratorate. An extension of one to four days is possible, but only under special circumstances.¹²⁴

121. See PRC Criminal Procedure Law of 1996, art. 64. It is clear that this provision will be of little use in protecting the rights of *shoushen* targeted criminals, i.e. "a person who goes from place to place committing crimes" (art. 61(6)).

122. *Id.*

123. See also art. 9, para. 2 of the PRC Police Law, which provides that investigative detention by the police should not exceed 24 hours, and with the approval of the next level of public security organs, no more than 48 hours. The PRC Police Law provides for a shorter initial detention period (12 hours) before an *external* approval is necessary from the procuratorates.

124. Article 69 of the PRC Criminal Procedure Law of 1996 provides that: "Under special circumstances, the time for requesting review and approval may be extended by one to four days." The meaning of what constitutes "special circumstances" is not defined under the statute. In light of the comprehensive nature of the law, it does not appear to be the intent of the NPC to allow for a liberal interpretation of "special circumstances." The most likely "special circumstances" are cases where investigation might be hampered by the inability to seek timely approval for such an extension, as in cases of geographically inaccessible police posts. Standing Committee of NPC Legal System Committee, "Guanyu ruhe lijie he zhixing falu ruogan wenti de jieda (yi)" (Regarding Solutions to Certain Questions on How to Interpret and Implement the Law) (1) in *Restrictive Interpretation II*, *supra* note 4, p. 3, item 2.

This can be further extended for 30 days in cases involving "a major suspect who is on the run and who repeatedly commits crimes."¹²⁵

The PRC Criminal Procedure Law of 1996 sets forth parameters for all investigative detention.

The period for holding the crime suspect in custody during investigation may not exceed two months, with a possible extension for another one month with the approval of the procuratorate at the next level if the case is complicated.¹²⁶

Beyond this outer limit, an extension can only be granted by a provincial, autonomous regional, or municipal people's procuratorate for special types of cases, which include: "A major and complicated case in which the suspect's crimes have been committed at various locations."¹²⁷ It is significant to observe that the PRC Criminal Procedure Law of 1996 makes clear that the procedure time clock on criminals or suspects detained for investigation does not start to run: "If the criminal suspect refuses to disclose his true name, address, and identity."¹²⁸

The 1996 PRC Criminal Procedure Law also provides for a process for the aggrieved citizen to challenge any illegal exercise of investigative detention powers. First, the aggrieved citizen has a

125. PRC Criminal Procedure Law of 1996, art. 69, para. 2. A liberal construction of this provision will include all "*liucuan fan*" who by definition are itinerant criminals.

126. PRC Criminal Procedure Law of 1996, art. 124, provides in pertinent part:

The period for holding the crime suspect in custody during investigation may not exceed two months. If a case is complicated and cannot be concluded before the period expires, the period may be extended by one month with the approval of the procuratorate at the next level up.

127. PRC Criminal Procedure Law of 1996, art. 126, states:

If investigation of any of the following cases cannot be concluded within the period specified by art. 124 of this law, the period may be extended by two months with the approval of or decision by a provincial, autonomous regional, or municipal people's procuratorate: (1) a major and complicated case in a remote region with very poor transport facilities; (2) a major criminal gang case; (3) a major and complicated case in which the suspect's crimes have been committed at various locations; and, (4) a major and complicated case involving a broad spectrum of crimes for which evidence is difficult to obtain.

128. Art. 128 provides in pertinent part:

If the criminal suspect refuses to disclose his true name, address, and identity, the period under which he can be held in custody starts from the date the identity is clarified

If this provision is literally applied, the PRC Criminal Procedure Law of 1996 will be of little use in protecting a large group of criminal suspects against prolonged investigative detention, e.g., those from the *mangliu* ranks, the same problem that existed under the *shoushen* investigative system.

right to file a complaint against the police.¹²⁹ Second, art. 75 of the PRC Criminal Procedure Law of 1996 provides the aggrieved citizen with a statutory remedy to ratify any illegal detention:

A suspect or a defendant and his or her legal representative and close relatives, or counsels appointed by a suspect and the defendant, have the right to demand rescission of the coercive measures taken by . . . public security organ that have exceed[ed] the legal limit. The . . . public security organ shall release the suspect or defendant against whom the coercive measures exceeding the legal limit have been taken. . . .

Finally, the people's procuratorate is also charged with the responsibility of rectifying any illegal investigation activities in the process of reviewing and approving arrests made by the public security.¹³⁰

IV. THE FAILURE OF PROCESS: THE PREVALENCE OF *SHOUSHEN* ABUSE

The *shoushen* power has been much abused in China.¹³¹ A Chinese legal scholar observed that "in practice, sheltering for examination has led to a variety of abuses and problems."¹³²

129. Art. 14, para. 3 states: "Participants in proceedings have the right to bring complaints against . . . investigators for acts that violate their procedural rights as citizens. . . ."

130. Art. 76 provides:

In the course of its work of reviewing and approving arrests, if a people's procuratorate discovers that there are illegalities in the investigation activities of a public security organ, it shall notify the public security organ to rectify them, and the public security organ shall notify the people's procuratorate of the circumstances of the correction.

131. "Mu xian gonganju muo xie ren xuyi zhengren, zhuanyehu Shao XX yijia wuren bizhao yiren taowang" (Certain People at the Mu County Public Security Bureau Harass People; Five in the Shao XX's Family Were Arrested and One Is on the Run) in *Zhongguo fazhibao* (Legal Daily), Sept. 2, 1985 (The Supreme People's Procuratorate investigated a case of *shoushen* abuse by the a county party committee leading to the dismissal of two county prosecutors), as cited in Cai Cheng (ed.), *Zhonghua renmin gongheguo shier fa anli huilan* (A Comprehensive Overview of Cases From 12 PRC Laws) (Beijing: Zhongguo chengfa daxue chubanshe, 1992), p. 66 [hereinafter "*12 PRC Laws*"].

132. Hsia & Zeldin, *supra* note 16, p. 13. Hsia and Zeldin based their conclusion primarily on the work of two PRC articles, Yang Liangfeng & Wei Huaming, "Research on Incorporating Holding for Investigation into the Criminal Enforcement Measures," *Faxue pinlun* (Law Review) 5/1989, pp. 29-33; Zhao Shiming, "The Sheltering for Examination Must Be Perfected," *Faxue* (Law Science), Vol. 8 (1990), pp. 28-30. See Hsia and Zeldin, *supra* note 16, notes 117 to 128.

Shoushen has been used much more broadly than permitted or intended. It has often been used to avoid the legal process or other institutional control mechanisms. There are many reported cases of *shoushen* without legal authority and over-extended investigative detention beyond the administrative time limit.¹³³ For example, according to official statistics, between April and May of 1986 there were tens of thousands of *shoushen* cases, only 36.2% of which met existing *shoushen* requirements, and in some provinces the compliance rate was as low as 10%.¹³⁴ In another study: "of the 648 cases first categorized under sheltering for examination, 85.49% were later changed into those requiring arrest, reeducation through labor, or public security administration punishments or were not prosecuted at all."¹³⁵ In sharp contrast, the Supreme People's Procuracy noted that from March 1981 to June 1981 there were only 60 applications by public security organs of 16 provinces and autonomous region for the extension of custodial period involving 122 persons.¹³⁶ Non-compliance with *shoushen* time limits far exceeds compliance attempts. There are also reported cases in which *shoushen* persons were detained in the same facilities with the serious criminals or were not given sufficient food or clean lodging.¹³⁷ *Shoushen* has become to be an open warrant for criminal arrest, an all purpose pretext for investigative detention, and even as a means of imposing summary punishment.¹³⁸

There is very little public information on *shoushen*. There is still less information bearing upon the nature, prevalence and cause of its abusive use.¹³⁹ The only available statistics on police detention come from the *Procuratorial Yearbook of China* [hereinafter

133. See discussion of cases in Part V "The Failure of Process: The Nature of *Shoushen* Abuse, esp. "E. How *Shoushen* Has Been Abused" *infra*.

134. *Forty Years*, *supra* note 10, p. 381.

135. Hsia & Zeldin, *supra* note 16, p. 27.

136. "Xingshi jianchating de tongzhi" (Circular From Criminal Prosecution Office) (June 16, 1981), *Restrictive Interpretation II*, *supra* note 4, at p. 191.

137. Chen & Zhang I, *supra* note 5, pp. 72-78.

138. Public Security Report (1985) 50, *supra* note 4.

139. "Guanyu bianyin xingshi anli bixu zhuyi de jige wenti de tongzhi" (Circular Regarding Paying Attention to Certain Questions in Editing and Publishing Criminal Cases) (promulgated on August 23, 1985) in *Encyclopedia*, *supra* note 22, p. 219. (The public security considers *shoushen* statistics inappropriate for public distribution); "Guanyu buyi gongkai baodao shouron shencha de tongzhi" (Circular Regarding the Inappropriateness of Public Announcement of Sheltering for Examination) (promulgated on January 27, 1987) (The police should not release any information about *shoushen* to the press and the press should not print anything about *shoushen*), *id.*, p. 839.

“*Procuratorial Yearbook*”].¹⁴⁰ The *Procuratorial Yearbook* provides three types of data bearing upon the abusive use of *shoushen*: statistics on legal violations on detention, on prosecutions for illegal arrests, and on annual self-reporting by cities and provinces on illegal and illegally-extended detention.

A. Legal Violations by the Police (“*Weifa jiuzheng*”)

Art. 13(2) of the People’s Procuracy Organic Law empowers the people’s procuracy to correct (“*jiuzheng*”) any noted legal violations by the police in the exercise of its legal authorities, including illegal *shoushen* detention.¹⁴¹ The *Procuratorial Yearbook* reports annual data on corrections of illegal police conduct (“*weifa jiuzheng*”) in investigation, adjudication and detention. The reported data on detention supervision show clear evidence of abuse of process.

TABLE 3: 1987-1991 LEGAL CORRECTION OF LEGAL VIOLATIONS BY THE PEOPLE’S PROCURATORIAL ORGANS NATIONWIDE OVER ILLEGAL DETENTION

Year	Total violations	Total detention violations	Written notice to correct	Oral notice to correct
1987	26927	21096	2293	18801
1988	28415	21487	2468	19019
1989	32123	24579	2814	21765
1990 ¹⁴²	145998	130017	16087	113930
1991	133771	114545	14678	99867

Source: extracted from (*Procuratorial Yearbook* (1988) - (1992) (Zhongguo jiancha chubanshe, 1989 - 1992) For 1987 data, see *Procuratorial Yearbook* (1988), at p. 357; for 1988 data, see *Procuratorial Yearbook* (1990), at p. 414, for 1990 data, see *Procuratorial Yearbook* (1991), at p. 347; for 1991 data see *Procuratorial Yearbook* (1992), at p. 367.

140. *Zhongguo jiancha nianjian* (Procuratorial Yearbook of China) (1988) to (1992) (Beijing: Zhongguo jiancha chubanshe, 1989-1993).

141. Organic Law of the People’s Procuratorates of the People’s Republic of China (Adopted at the Second Session of the Fifth National People’s Congress on July 1, 1979, promulgated by Order No. 4 of the Chairman of the Standing Committee of the National People’s Congress on July 5, 1979, and effective January 1, 1980) in *The Laws of the PRC* (1979-1982) (Beijing: Foreign Languages Press, 1987), pp. 80-87.

142. Between 1989 and 1990, reported corrections in all areas increased sharply. This resulted from system-wide criminal justice statistic reform in China. “Jiancha tongji gongzuo zanxing guiding” (Provisional Regulations on Procuratorate Statistic Work) (adopted on October 26, 1989); “Zhonghua renmin gongheguo tongji fa” (PRC Statistic Law) in *Procuratorial Yearbook* (1990), pp. 300-303; Supreme People’s Procuratorate “Guanyu jiaqiang jiancha tongji gongzuo de jueding” (Resolution Regarding

(1) *Detention violations outnumbered investigation and adjudication violations combined.* In every year such data were available (1987-1991), *weifa jiuzheng* over detention violations constituted the major part of the people's procuratorial organs' supervisory activities. In 1987, detention violations constituted 78.3% of the total violations reported; in 1988 it was 75.6%, in 1989 it was 76.5%, in 1990 it was 89%, and in 1991 it was 85.6%. The data attested to the fact that detention violations were a major pre-occupation of the procurators in that the procurators were devoting more and more of their limited resources to dealing with such abuses.

(2) *Detention violations were increasing in absolute as well as relative terms.* Between 1987 and 1991 detention violations increased four-fold from 21096 to 114545 cases. This is to be compared with investigation and adjudication violations, which only increased by 330%, i.e. from 5831 to 19226. Increase in detention violations were rising faster than investigation and adjudication violations. This suggested that there were increasingly more detention violations than investigation and adjudication.

(3) *Corrections to detention violations were increasingly more formalized.* More formality is suggested by the use of written, instead of oral, notice to correct a noted legal violation. In 1987, 2293 detention violations out of more than 21,000 cases were dealt with by written notices. The following years witnessed an increasing percentage in the use of written notices in detention cases: 11.5% in 1988, 11.4% in 1989, 12.4% in 1990, and finally 12.8% in 1991. The conclusion is obvious: detention violations are getting more serious and thus require more formal disposition.

B. Illegal Detention Prosecutions¹⁴³

The picture presented by data on the infringement of citizens' democratic rights cases handled by the people's procuratorates nation-wide for the years 1979 to 1985 shows a similar, though much

Strengthening Procuratorates' Statistical Work) (promulgated on November 6, 1989) in *id.*, pp. 293-296. "Renmin jiancha zhijie shouli de qinfan gongmin minzhu quanli renshen quanli he fuzhi anjian lian biao zhun de guiding" (Regulations Regarding Standards for Filling Cases Directly Handled by the People's Procuratorates Concerning the Violation of People's Civil Rights, Personal Rights, and Dereliction of Duties) (adopted in 1991) in *Procuratorial Yearbook* (1991), pp. 266-69.

143. The small number of reported cases raises substantial question about the validity of the data in reflecting actual procuratorial activities for the years in question. The data should be carefully construed. While the data might not register *actual illegal* activities, they reflect official concern in *relative* terms.

more variegated pattern. Illegal arrest and detention cases have been increasing overall.

(1) *Illegal arrests and detention were a major concern.* Between 1979 and 1985, procurators across the nation devoted half of their enforcement resources to the prosecution of illegal arrest, detention, and search cases, i.e., 52.1% of all reported cases for the period. Most resources were devoted to illegal arrest cases, i.e., 39.8% of all cases handled during the period. Since there were more cases the procurators could have handled, actual cases (reported) being handled reflect a conscious priority setting within the procuratorate organs and in turn indicates the magnitude of the problem as perceived. Illegal arrests and detention were a serious concern.

(2) *Illegal arrests, detention and search cases showed marked increase from 1979 to 1985.* Total illegal arrest cases handled increased from 334 in 1979 to 1091 in 1985, an increase of 326.6%. Total illegal detention and search cases increased from 17 to 281, an increase of 1552%. In both instances, most of the increase accrued between 1979 and 1980, the formative years of the PRC legal system. Illegal arrests jumped from 334 to 834, an increase of 249.7%. Illegal detention and searches jumped from 17 to 285, an increase of 1676.6%. Since then, both classification of cases experienced downward as well as upward movements, with illegal detention and search cases being the more stable of the two. Illegal detention and search cases peaked in 1981 with 317 cases reported; it dipped to 199 cases in 1984, before ending with an increase to 281 cases in 1985. Illegal arrest cases declined from a high of 834 in 1980 to a low of 559 in 1982 before they climbed again to a new high of 1091 in 1985. It is significant to note that since 1981, the share of illegal arrest cases handled has never dipped below 42% of the total infringement cases prosecuted.

The gyrating figures show discernible patterns and allow at least some tentative observations. First, in the early 1980s (1981 and 1982) illegal arrests, detention and searches increased as a result of cleansing past wrongs from the "gang of four" era and also as a result of the institutionalization of the criminal justice system. Second, once the past wrongs had been settled and the new criminal justice system began to take shape in 1981, the procuratorate organs experienced a sharp drop in illegal arrest, detention and search cases. Third, beginning in 1983, illegal arrests started to climb again as a result of the anti-crime campaign ("*panda*") of 1983-1987.

The citizens' rights infringement data available from the Heilongjian procuratorate for the period 1979 to 1985 support the

TABLE 4: 1979-1985 INFRINGEMENT OF CITIZEN'S DEMOCRATIC RIGHTS CASES HANDLED BY THE PEOPLE'S PROCURATORATES NATIONWIDE

Nature of Violation	1979	1980	1981	1982	1983	1984	1985	Total
Illegal arrest	334 20.2%	834 32.8%	777 45%	559 43%	570 42.3%	779 42.2%	1091 54%	4944 39.8%
Illegal detention/search	17 1%	285 11.2%	317 18.3%	211 16.3%	219 16.2%	199 10.8%	281 13.9%	1529 12.3%
Total	1651	2543	1730	1293	1346	1844	2019	12426

Source: Reconstructed from *Dangdai zhongguo de jiancha zhidu* (Procuratorate System in Contemporary China) (Beijing: Dangdai Zhongguo chubanshe, 1987), p. 198.

above-noted national trend. Total infringement cases handled by the Heilongjian procuratorate rose sharply between 1979 and 1980, from 144 cases to 268 cases. They dropped precipitously to 96 cases in 1981 and 57 cases in 1982 before starting to climb in 1983 to 85 cases and in 1984 to 145 cases. More informative for our purpose is that tortured confession and unlawful detention cases top the list of cases handled by the procuratorate: tortured confession constituted 50.3% cases handled during this period followed by illegal detention at 17.4%. Police abuse of powers, including illegal detention, was a prevalent and serious problem during the reported period.

C. Self-Reporting of Illegal and Over-Extended Detention

The self-reporting provincial data on illegal and prolonged detention cases is especially revealing of the *general* picture and *overall* problem with the abuse of police detention powers. Using the year 1990 for illustrative purposes, Beijing¹⁴⁴ reported 485 cases of illegal detention or 5.7% of all of the arrests that year. This represented an increase of 113% over 1989. Hebei¹⁴⁵ reported 475 cases of illegal detention or 2.2% of all arrests. This is an increase of 51% over 1989. It also reported 2417 cases of over-extended detention or 11.3% of all arrests. Shanxi¹⁴⁶ reported 985 cases of illegal detention or 6.9% of all arrests. Inner Mongol¹⁴⁷ reported problems with over-extended detention, but offered no statistics.

144. *Procuratorial Yearbook* (1991), p. 37.

145. *Id.*, p. 44.

146. *Id.*, p. 49.

147. *Id.*, p. 53.

**TABLE 5: 1979-1985 INFRINGEMENT OF CITIZEN'S
DEMOCRATIC RIGHTS HANDLED BY THE
HEILONGJIAN PEOPLE'S PROCURATORATE**

	1979	1980	1981	1982	1983	1984	1985	Total
Tortured confession	72	134	48	29	42	74	65	463
Unlawful detention	23	42	21	10	12	26	27	161
Total of all cases	144	268	96	57	85	145	130	925

Source: Extracted from *Heilongjian jianchazhi* (Heilongjian: Heilongjian renmin chubanshe, 1988), p. 79.

Liaoning¹⁴⁸ reported 1833 cases of over-extended detention or 6.3% of all arrests. Heilongjian¹⁴⁹ reported having problems with using illegal detention to secure the repayment of debts, but provided no statistics. Shanghai¹⁵⁰ reported 148 cases of illegal detention or 1.3% of all arrests. Shandong¹⁵¹ reported 1056 cases of illegal detention or 4.2% of all cases. Henan¹⁵² reported 6908 cases of over-extended detention or 15.6% of all arrests. Hubei¹⁵³ reported 3932 cases of over-extended detention or 3.7% of all arrests. Guangdong¹⁵⁴ reported 6597 cases of over-extended detention or 23.8% of all arrests. Hainan¹⁵⁵ reported 853 cases of over-extended detention or 19.5% of all arrests. Guizhou¹⁵⁶ reported 1278 cases of over-extended detention or 4% of all arrests. Yunan¹⁵⁷ reported 965 cases of illegal detention or 4.1% of all arrests. Qinghai¹⁵⁸ reported 147 cases of over-extended detention or 3.5% of all arrests.

If we take the self-reported cases of illegal and over-extended detention as a proximate indicator of *shoushen* violations, we see that the problem with abuse of the detention process is quite noticeable. Illegal and over-extended detention average 8% of all ar-

148. *Id.*, p. 55.

149. *Id.*, p. 63.

150. *Id.*, p. 68.

151. *Id.*, p. 91.

152. *Id.*, p. 95.

153. *Id.*, p. 99.

154. *Id.*, p. 106.

155. *Id.*, p. 114.

156. *Id.*, p. 121.

157. *Id.*, p. 125.

158. *Id.*, p. 141.

TABLE 6: SELF-REPORTED CASES OF ILLEGAL AND OVER-EXTENDED DETENTION AS A PERCENTAGE OF ALL ARRESTS BY PROVINCES AND CITIES IN 1990

City or Province	Illegal Detention	Extended Detention	Percent of Arrests
Beijing	485	N/A	5.7%
Heibei	475	2417	13.5%
Shanxi	985	N/A	6.9%
Inner Mongol	N/A	problems	N/A
Liaoning	N/A	1833	6.3%
Heilongjian	problems	N/A	N/A
Shanghai	1056	N/A	1.3%
Shangdong	1056	N/A	4.2%
Henan	N/A	6908	15.6%
Hubei	N/A	3932	3.7%
Guangdong	N/A	6597	23.8%
Hainan	N/A	853	19.5%
Guizhou	N/A	1278	4.0%
Yunan	965	N/A	4.1%
Qinghai	147	N/A	3.5%
Average	N/A	N/A	8.0%

Source: Extracted and reconstructed from *Procuratorial Yearbook of China* (1991)

rests reported in 1990. If we only consider over-extended detention cases, the percentage is even higher. It stands at 12%. It should be noted that the average rate is distorted by over-extended detention cases, especially those from Henan (15.6%), Guangdong (23.8%) and Hainan (19.5%). They are all located in the south. It is also of interest to note that the cities with the least detention problems are Shanghai (1.3%) and Qinghai (3.5%), located in the north.¹⁵⁹ Inasmuch as the illegalities are self-reported, we can safely assume that the actual rate of illegal and over-extended detention cases were much higher.

159. There is a distinct need to provide for well-researched social scientific explanations for such an uneven distribution of illegal detention. A number of speculative reasons can be given: (1) the south enjoys a reputation for being "wild" and "unruly." It is a place where entrepreneurship and pragmatism prevail over principle and rules, and economic expediency overrides legal propriety; (2) the southern Provinces, particularly the coastal areas, were the first to be opened up to market economy and trade with foreign nations. Both portent social and criminal problems for the region; and, (3) these southern cities were also far away from the political center of control in the North.

V. THE FAILURE OF PROCESS: THE NATURE OF *SHOUSHEN* ABUSE

The magnitude of the *shoushen* problem is apparent from the discussion of Supreme People's Procuracy data above, but the data do not explain the nature of *shoushen* abuse. Indeed, there is very little public information that would allow one to gain insight into why and how *shoushen* has come to be used illegally. Recently, the public security organs have become more willing to publicize cases involving *shoushen*.¹⁶⁰ These cases provide perhaps the best examples on how *shoushen* has been abused.¹⁶¹ The cases made public show that *shoushen* has often been used to avoid existing legal process, e.g., by passing supervision and to achieve extra-legal ends, e.g., obtaining retribution, advancing organizational interests, or to settle economic disputes.

A. *Shoushen* as Retribution ("yi quan dai fa")

Shoushen has been used to exact retribution from people who challenged the Party or state authorities. *Shoushen*, being administrative in nature and completely within the control of the police, is most susceptible to this kind of abuse. The temptation is great to use *shoushen*, an open-ended power with little oversight, to vindicate a private grievance, personal affront, organizational interests, or institutional authority, especially when done for a higher moral or larger organizational purpose, as the following cases attest.

Case 1¹⁶²: Public security imposed *shoushen* on a person whom the procurator had refused to prosecute. Wang resigned as a police

160. "Guanyu xiang difangzhi tigong gongan gongzuo qingkuang youguan baomi wenti pifu" (Official Reply Regarding Questions of Confidentiality When Supplying Public Security Work Information to Local Annals Upon Request) (promulgated on June 1, 1988), *Encyclopedia*, *supra* note 22, p. 875. (The reply effectively amended the prior blanket prohibition on the public release of certain police information announced in "Guanyu gongan jiguan canjia pianxiu difangzhi zhong ying zhuyi de wenti tongzhi" (Circular on Issues the Public Security Organs Should Be Concerned with When Participating in the Editing of Local Annals) of December 12, 1983. Id.

161. See *Compensation Cases*, *supra* note 69; 12 PRC Laws, *supra* note 131; Court Cases, *supra* note 84. The court cases, mostly released after 1990, should be viewed as a concerted effort by the PRC leadership to arrest the misuse of *shoushen* powers, especially in economic cases, through education and propaganda. This constitutes a shift in policy from keeping *shoushen* secret to opening discussion on its proper use and illegal abuses. See Commercial Notice, *supra* note 93, pp. 20-22, item 4. (The treatment of illegal detention cases in commercial disputes with serious social consequences should be released through the news media.)

162. 100 PRC Laws, *supra* note 105, p. 1084.

officer to be a factory worker. He went to Sun, the police post chief, to claim his back salary. They had a fight and Wang was hurt. Later on, Wang visited Sun's home with his parents. They argued all night about Wang's salary. Sun filed a complaint with the county public security office to have Wang arrested for obstructing official business and intruding into a civilian's residence. The county procurator refused to arrest Wang due to the minor nature of the offenses. The county public security subjected Wang to *shoushen*, notwithstanding the procurator's decision. Wang was sentenced to labor education for one year. He appealed to the labor education committee and was denied relief. He appealed to the people's court. The court reversed the decision.

Case 2¹⁶³: A lawyer was placed under *shoushen* for calling a witness who was to testify against the procurator. Zhou X ("Zhou"), a part time lawyer with a law consulting office in the south-east part of China was assigned on August 1, 1989 to defend Hou XX ("Hou") for beating and killing a suspected thief. Zhou solicited the help of Liu XX ("Liu"), who stated that he did not witness the beating or killing, but was induced by two procurators to make a signed statement implicating Hou for hanging the thief. Zhou and Hou asked Liu to come to the court hearing, but Liu killed himself on August 5, 1989, a day before he was due to appear.

On August 5, 1989 Zhou appeared as Hou's defense lawyer and was placed under *shoushen* for 11 days for "illegal summons causing the death of a person."

In Case 1 the police post chief Sun was able to prevail over the county public security organ, to subject Wang to *shoushen*. Wang was punished for challenging the local authority and the public security "establishment" in four ways: (1) Wang hurt the organizational interest of the public security by abandoning public service for private gains; (2) Wang challenged the institutional authority of Sun by insisting on his wage claim, in spite of Sun's refusal; (3) Wang challenged the personal authority of Sun by engaging him in an argument, at work and at home; and, (4) Wang challenged the institutional authority of the public security when the application for prosecution of Wang was declined by the procurator.

In Case 2, the county public security organ, used *shoushen* to penalize the lawyer Zhou for playing his *proper* role as an advocate. Zhou should have promoted the interest of the state in promoting "socialist justice" and not taking side with Hou, a suspected killer,

163. 12 PRC Laws, *supra* note 131, pp. 25-6 [hereinafter "Case 2"].

in obstructing the course of justice. More significantly, Zhou should not have recruited Liu to contradict the procurators and suggest that there was foul play. Zhou's action challenged the institutional authority of the criminal justice system and subverted the organizational interests of the county procuratorate. The public security was compelled to use the *shoushen* to achieve an *extra* legal end, i.e., to sanction Zhou for challenging the establishment.

B. *Shoushen* as Summary Punishment ("dai xing")

The *Shoushen* process is often used to impose *summary* punishment in lieu of investigation, prosecution and trial. In such instances *shoushen* is made to represent legal punishment. The appeal of using *shoushen* this way is that it is cheap, fast, flexible and effective. It avoids timely investigations and costly trials. Ultimately, the propensity to use summary justice is suggested by an entrenched cultural attitude and compelled by limited organizational resources.¹⁶⁴ Such illegal use of *shoushen* also attracts little accountability. The *shoushen* subjects are outsiders or of little economic means. They are ignorant of the law and are often ignored by the law. They are easily intimidated by authority and cannot afford the time and money to challenge *shoushen* decisions.¹⁶⁵

Case 3¹⁶⁶: Local farmers were subject to prolonged *shoushen* for planting over another's farmland. Plaintiffs Liang Xiang ("Liang") and Jiang De ("Jiang") were farmers. The defendant was a public security office of a farmers' collective. Liang and Jiang were dissatisfied with the village head's decision to allocate an extra 5.2 *mu*¹⁶⁷ of farm land to a newcomer, Gao Zhou ("Gao"), and decided to take the matter into their own hands and planted Gao's land with their own maize. Gao attempted to replant the plot, whereupon Liang and Jiang destroyed Gao's crop and planted their own. The local public security decided to *shoushen* Liang and Jiang for

164. Kam C. Wong, "A Reflection on Police Abuse of Power in the PRC," paper delivered at 1997 Annual Meeting of the Academy of Criminal Justice, Sciences, March 11 to 15, 1997, Louisville, Kentucky; Chen Jianguo (ed.), *Renmin fayuan xingshi susong shiwu*, (People's Court Criminal Procedure Practical Work) (Beijing: Renmin fayuan chubanshe, 1992), p. 2 (Many people in the Chinese criminal justice system consider legal procedures as burdensome and a waste of time and money, believing that it is more important to get correct results than to abide by procedure rules, i.e., "zhong shiti qingchenxu" ("emphasize substance and slight procedures").

165. D. Black, *The Behavior of Law* (N.Y.: Academic Press, 1976), pp. 1-2.

166. Case 26 "Ci an yingyou shui dang beigao" (Who should be the defendant in this case?) in *Compensation Cases*, *supra* note 69, pp. 47-48 [hereinafter "Case 3"].

167. "Wu mu er fen" or 0.3468 hectares.

210 days, from May 30, 1990 to December 28, 1990. Finally, on January 30, 1991, Liang and Jiang appealed their *shoushen* decision to the public security bureau at the farmers' collective, whereupon it was determined that the public security officer who had placed them under *shoushen* had violated Public Security Report (1985) 50. Liang and Jiang were paid 269.3 RMB each for their economic loss, and received 392.3 RMB and 240.33 RMB, respectively, for medical expenses incurred while in custody.

*Case 4*¹⁶⁸: Fishermen were subject to *shoushen* for six months based solely on allegations that they stole some fishing nets. The plaintiffs Tan Sheng ("Tan") and Zhang Xing ("Zhang") were fishermen. The defendant was a rural district public security sub-station.

In November 1989, fisherman Tan found that all of his 90 new shrimp nets had disappeared and accused his fellow fishermen Tan, Zhang and Hung Chun of stealing them. Tan checked their boats and could not find his nets, whereupon he formally apologized. On July 17, 1990, Tan complained to the town public security that six of his fishing nets were found on board Tan and Zhang's boats. Notwithstanding Tan and Zhang's protest of innocence, the rural district public security confiscated their fishing nets and submitted them to *shoushen* for six months until January 1, 1991. No evidence of wrongdoing was ever uncovered. As a result of the detention, Tan and Zhang were not able to engage in any fishing and had to pay 3-4,000 RMB for the maintenance of their fishing boats. They filed an administrative complaint with the court seeking compensation of 20,000 RMB. On July 7, 1991 the public security organ formally apologized to Tan and Zhang for their wrongful detention and offered to pay 6000 RMB as compensation. The town's political committee leadership offered to advance Tan and Zhang a 20,000 RMB loan to re-establish their fishing venture.

In both of these cases, *shoushen* was used as summary punishment in lieu of formal legal punishment. In case 3, summary punishment was deemed warranted because the wrongdoing was so obvious. There was no need for the criminal justice process to run its course. In case 4, the opposite is true. There was hardly any evidence of wrongdoing. Justice required that Tan and Zhang be

168. *Compensation Cases*, *supra* note 69, Case 49 "Mistake should be ratified, that is the only way to gain the mass's wholehearted support," pp. 86-87 [hereinafter "Case 4"].

punished. Their legal guilt might be questionable and difficult to establish, but their moral guilt was not.

C. Shoushen in Aid of Investigation (“*dai cha*”)

Shoushen has been used to facilitate investigation, such as to secure the attendance of suspects and to induce cooperation from reluctant witnesses. In these types of cases, the *shoushen* persons were not a proper subject for examination: suspects’ identities, addresses and employment were known; the facts in the cases were relatively simple; and there was very little reliable information with which to justify the initial *shoushen* decision. More significantly, these cases demonstrated very little need for prolonged investigation or examination in custody. *Shoushen* was employed in such cases to facilitate an ongoing investigation.

*Case 5*¹⁶⁹: An office clerk was illegally subject to *shoushen* for the purpose of carrying out the investigation into an alleged defamation charge. The plaintiff, Cheng Yingchun (“Cheng”), was an 18 years old clerk typist from Shanxi Province, Luliang district industrial bureau. The defendant was the Shanxi Province, Lishi public security bureau.

On March 10, 1991, the public security was investigating a case of defamation with Cheng as the prime suspect. On the morning of March 11, 1994, Cheng was lured by a public security detective to a waiting jeep and detained. Cheng was not informed of the reason for detention, nor was there any legal documentation. She was first detained at the Xinyi police post in Lishi county and later transferred to the Lishi county public security bureau. In the meantime, she was asked to sign her name to the summons authorizing her sheltering for examination. On March 12, 1991, she was asked to sign a “Notice of shelter for examination” (“*Shouron shencha tongzhi shu*”) post-dated to March 10, 1991. While in custody, Cheng was repeatedly asked about the mimeographed defamation materials. She denied any knowledge or involvement. Finally, the public security bureau decided that “the investigation cannot resolve the problem, further investigation awaits.” She was released from *shoushen* on April 3, 1991. As a result of the incident, Cheng suffered from psychological disturbances and had to be treated at

169. *Court Cases*, *supra* note 84, 1992/Vol.1, Case no. 41: “Cheng Yingchun xu Lishixian gonganju duiqi weifa shouron shencha an” (The case of Cheng Yingchun suing Lishi county public security bureau for illegal sheltering for examination), *id.*, pp. 170-71 [hereinafter “Case 5”].

the hospital from April 10, 1991 to June 13, 1991. Cheng sued for apology, economic damages, reputation losses, wage compensation and hospitalization expenses. On June 11, 1991, the Lishi People's Court determined that the public security bureau had wrongly subjected Cheng to *shoushen* and in the process abused its authority and violated Cheng's rights. The court awarded Cheng 4,913 RMB for lost wages, medical expenses and hospitalization expenses. The court made the decision under PRC APL, arts. 54 (2)(3), 54 (2)(5), and 64 (1).

*Case 6*¹⁷⁰: A burglary suspect was wrongfully subject to *shoushen* for the purpose of carrying out an investigation into the burglary. On August 18, 1989, Wang discovered that his house and his neighbor Wu's house had been burglarized. Wang alerted Wu of the break-in and reported the incident to the local public security office. Public security officials investigated and found a pair of Wu's eyeglasses and a ring in Wang's house.

On November 14, 1989, public security officials interrogated Wang as a suspect and on November 15, 1989 placed Wang under *shoushen* for investigation. Wang was cleared on December 16, 1989, after 32 days of fruitless investigation. Wang filed a complaint with the local court claiming that the 32 days of *shoushen* were not based on any evidence and deprived him of his liberty, reputation, and wages. Wang demanded compensation of 456.32 RMB for wage and incentive losses, and 500 RMB for loss to his reputation. The public security insisted that the *shoushen* was legal and proper under State Release (1980) 56. The court held for the plaintiff and decided that Wang was not a proper target for *shoushen* under State Release (1980) 56 and that he had suffered economic and reputation losses. The defendant was required to mediate with Wang under PRC APL art. 67. The mediated settlement amounted to 300 RMB for lost wages and incentive pay and 200 RMB for losses to reputation. The public security bureau was also found responsible for the 70 RMB court costs.

D. *Shoushen* to Secure the Settlement of Commercial Disputes

Shoushen has been used to secure the settlement of commercial disputes, including the repayment of debts, the return of deposits, or the fulfillment of contractual obligations, particularly from

170. *Compensation Cases*, *supra* note 69, Case 37 "Peichang susong keyi shiyong tiaojie" (Compensation Litigation Is Suitable for Mediation), pp. 68-69 [hereinafter "Case 6"].

non-local parties. In these cases, *shoushen* is deemed necessary because of the genuine fear of absconding by debtors, difficulties in seeking the satisfaction of claims, or disagreement over the merits of a particular claim. In most instances, *shoushen* is used to protect local interests. In some instances, it is used as a result of non-cooperation from distant jurisdictions. In almost all instances, it is used as an expedient way to provide satisfaction to commercial claims, when the alternative is a perceived non-functional or ineffective commercial dispute resolution system.¹⁷¹

*Case 7*¹⁷²: The public security bureau used *shoushen* to secure the return of a down-payment on a construction project. The plaintiff, Guo Debing ("Guo"), was a construction worker from Jiangsu Province, Nantong County. Between July and October 1990, Guo led a team of construction workers (including Fan) in constructing five houses in Xinjian Province, Jinghe County. Guo ran off with the down-payment of 8,000 RMB without paying the workers' wages of 3500 RMB. The workers reported their grievances to the Xinjian public security bureau. The public security bureau treated Guo's activities as fraud. On December 6, 1990, the public security bureau issued a warrant (sheltering for examination notice) for Guo's arrest. On December 17, 1990, Guo was detained in Nantong County jail. Guo filed an administrative complaint in the Jiangsu Province People's Court challenging the decision.

The court held for the plaintiff. The court determined that the public security bureau in this case had wrongly detained Guo. The court cited with approval the "Commercial Notice" that prohibited the use of police power to protect local interests and interfere with economic disputes.¹⁷³ The public security bureau should not have used *shoushen* as a coercive mean to force the return of a civil debt.

*Case 8*¹⁷⁴: Two villagers were placed under *shoushen* for receiving goods they did not know to have been stolen. Plaintiffs Hong Jizhen ("Hong") and Zhou Wenyan ("Zhou") were villagers from Sichuan Province, Xingdu county, Dafeng Tielu village. The defendant was the Sichuan Province, Su Yibin Public Security Bureau.

171. For a discussion of the nature of the problem, see "Commercial Notice" *supra* note 93.

172. Case 7, *supra* note 95.

173. Commercial Notice, *supra* note 93.

174. Case 8 in *Court Cases*, *supra* note 84.

In October 1990, Hong and Zhou contracted to purchase 3100 boards from Gao for 90,000 RMB. The Su Yibin Public Security Bureau discovered that Gao had obtained the boards by fraud from a Yibin city company. Gao delivered the boards to Hong and Zhou in fulfillment of the purchase agreement. When public security officials informed Hong and Zhou of Gao's fraud, both denied any knowledge of the origin of the boards. The public security bureau placed Hong and Zhou under *shoushen* on February 4, 1991 without ascertaining whether they still possessed the boards. They were not charged with any criminal offense nor were their families informed. On March 16, 1991, both men were released after their families surrendered 8,000 RMB as bail and security.

Hong and Zhou filed a complaint against the public security with the Sichuan Province, Xingdu People's Court, claiming that they were subject to illegal *shoushen* for a total of 51 days. The court decided that the *shoushen* decision was made without legal authority and the subsequent extension was without administrative approval.

*Case 9*¹⁷⁵: A middleman to a purchase gone awry was held under *shoushen*. The plaintiff, Wang Cuihua ("Wang"), was a retired railroad worker of Fujian Province, Guzhen County train station. The defendant was the Su County District Government Administrative Office Public Security Bureau, Fujian Province.

In July 1980, Wang acted as the middleman and guarantor for Shao Shuixian ("Shao") from Fujian Province, Tongan County, in his purchase of a used truck from the Suzhu City Xinguan Comprehensive Customer Services Center through a man named Liu Bin ("Liu"), for which 22,000 RMB was still owed.

Liu did not pay. On July 26, 1991 the Su County District Government Administrative Office Public Security Bureau placed Wang under *shoushen* for fraud. Wang was released upon surrendering 5,000 RMB and the deed to his house. On July 29, 1991, he surrendered another 3,000 RMB as required by the bail certification.

Wang filed a complaint with the Guzhen People's Court on August 8, 1991, claiming that he was wrongly subject to *shoushen*. The court determined that Wang was wrongly placed under *shoushen* because there was no evidence that Wang had committed a fraud. The court concluded that Wang was illegally subject to *shoushen* in violation of State Release (1980) 56, art. 2, particu-

175. See Case 9, *supra* note 1.

larly: "In forcing Wang to turn over the money and house deed, the public authority acted beyond the scope of its duty."

In each of the commercial dispute cases above, *shoushen* was used without legal authority. In Case 7, the court concluded that the identity of the *shoushen* subject Guo was not in doubt.¹⁷⁶ In Case 8, the courts observed that there was no evidence of Hong and Zhou's illegal activities or the fact that they were itinerant criminals.¹⁷⁷ In Case 9, Wang was found by the court not to have engaged in fraud.¹⁷⁸ More significantly, the courts in all three cases found that *shoushen* was used to advance impermissible and extra-legal objectives: facilitating the settlement of commercial disputes.

In Case 7, the Jiangsu Province, Nantong County People's Court opinion gave a clear and unequivocal statement of policy that *shoushen* should not be used as a debt collection device:

The dispute between the plaintiff and Fan in this case is purely a commercial one. This kind of commercial dispute should be resolved through civil litigation based on principles of fairness. The Xinjian Province Jinghe County Public Security Bureau has no authority to interfere in the commercial dispute in this case. They further should not use *shoushen* as a coercive measure to deprive a person's freedom in order to seek repayment of debt.¹⁷⁹

In Case 8, the Sichuan Province, Xingdu People's Court held that the Yibin Public Security Bureau had no evidence to subject Hong and Zhou to *shoushen*, and failed to seek approval for an extension of the *shoushen* period. More significantly, the court held that the "collection of 8,000 RMB as bail is not based on any law, regulations, or rules, and should be returned."¹⁸⁰

Finally, in Case 9, the Guzheng people's court held that:

According to all the available evidence, we cannot conclude that the plaintiff (Wang) conspired with Shao Shuixian, to defraud Liu Bin of the truck purchase money

176. See the opinion of the Jiansu Province, Nantong County People's Court in Case 7, *supra* note 95, p. 1179.

177. See Sichuan Province, Xindu County People's Court and Chengdu Intermediate People's Court decision in Case 8, *supra* note 84, pp. 181, 183.

178. See Anhui Province, Guzheng County People's Court opinion in Case 9, *supra* note 1, p. 1181.

179. See Jiangsu Province, Nantong County People's Court opinion, paragraph 2, Case 7, *supra* note 95, p. 1178.

180. Sichuan Province, Xindu County People's Court opinion, Case 8, *supra* note 84, p. 182.

... the defendant also used *shoushen* to coerce the plaintiff into surrendering cash and a house deed, and this is beyond the scope of the public security legal responsibility.¹⁸¹

E. How *Shoushen* Has Been Abused

All of the discussed cases show that the *shoushen* process has been abused by the Chinese authorities. In particular:

(1) *In none of the cases were the shoushen subjects proper targets of shoushen by law.* In Case 1, Wang was placed under *shoushen* although the procuratorate office had determined that he was not guilty of any crime. In Case 2, Zhou was placed under *shoushen* for performing his duty as a lawyer, which he was. In Case 3, both of the *shoushen* subjects, Liang and Jiang, had violated the law using another's farmland and thus should have been prosecuted, not investigated. In Case 4, the fishermen Tan and Zhang were properly accused of a crime and *shoushen* should not have been imposed. In Cases 5 and 6, the parties subject to *shoushen* were not itinerant criminals, and thus not proper targets for *shoushen*. Cheng (Case 5) worked in a government office; Wang (Case 6) worked and lived locally. Both were readily available for police investigation. In Cases 7 to 9, the *shoushen* power was improperly used to settle civil commercial disputes.

(2) *In many of the cases there was some form of procedural irregularities.* In Case 1, the public security bureau decided to submit Wang to *shoushen* even after he was cleared by the county procurator. This resembles double jeopardy. In Case 2, the public security bureau subjected Zhou to *shoushen* without any preliminary investigation. This resembles an arrest without probable cause. In Case 3, the public security bureau placed Liang and Jiang under *shoushen* for 210 days for destroying other's property, but never prosecuted them for the crime.

In Case 4, public security officials placed Tan and Zhang under *shoushen* for six months solely on account of Tan's theft allegation. The maximum time period (3 months) for *shoushen* was exceeded for both Cases 3 and 4. There was also no attempt to request an extension of the *shoushen* time period from the next level of public security authority, as required by law.

181. See Anhui Province, Guzhen County People's Court opinion, Case 9, *supra* note 1, p. 1183.

In Case 5, the public security bureau did not follow proper procedure in the *shoushen* of Cheng. Cheng was not presented with any warrant, she was not informed of the reasons for her *shoushen*, she was asked to sign a post-dated "sheltering for examination notice," she was not interrogated within the first 24 hours as required by the regulations, and she was secretly placed under *shoushen* without having her family or work unit informed.

In Case 8, the public security bureau placed Hong and Zhou under *shoushen* for fraud and possession of stolen property, but the decision to use *shoushen* was made before an investigation into whether Hong and Zhou had obtained the stolen boards by fraud and whether they still had the stolen boards in their possession. Hong and Zhou were placed under *shoushen* without their families being informed. They were detained for 51 days, 21 days beyond the initial *shoushen* period allowed by law. Finally, to earn their freedom, Hong and Zhou were required to surrender 8,000 RMB as bail and security.

(3) *In many of the cases, the shoushen subjects suffered grave reputation, physical, and economic losses.*

3.1. *Economic losses:* In Case 3, Liang and Jiang were both subsistence farmers. In Case 4, Tan and Zhang were poor fishermen. When they were placed under *shoushen* for six months, they and their families were deprived of their only source of income and financial support. Tan and Zhang even had to pay for the maintenance and upkeep of their fishing boats during their *shoushen* custody. We can estimate the degree of economic hardship suffered by these and other *shoushen* subjects by the settlement offered to Tan and Zhang in Case 4. Tan and Zhang were offered 6,000 RMB in compensation for economic losses and a 20,000 RMB loan to restart their production. Since people in rural China are still making as little as 50-300 RMB, the impact and interruption of *shoushen* on one's livelihood is apparent.¹⁸²

3.2. *Physical harm:* In Case 3, both Liang and Jiang ended up suffering from medical health problems while incarcerated. They were awarded medical compensation equaling their lost income: 392 RMB for Liang and 249 RMB for Jiang, while they were

182. In the case of state employees, they fare better. They are paid while subject to *shoushen*. "Guanyu goujia zhigong zai gongan shouron shencha jian gongzi wenti de chuli yijian" (Suggestions Regarding the Question of Salary for State Employee During Public Security Sheltering for Examination) (promulgated on April 10, 1984), *Encyclopedia, supra* note 22, p. 875 (State employees should be paid 75% of their salary during *shoushen*.)

awarded 269 RMB each for economic loss. In Case 5, Cheng had to be treated for serious mental health problems caused by *shoushen*. She was finally awarded compensation totaling 4,913 RMB in lost wages, medical fees, hospitalization fees, attendant fees and nutrition fees. In Case 10¹⁸³ ("Illegal *shoushen* should be compensated"), the *shoushen* subject Zhang Ping suffered mental as well as physical injury at the hands of his fellow cell mate. And in the Case of Hou who was placed under *shoushen* for suspected theft, he was tortured to death by the guard at the *shoushen* detention center.¹⁸⁴

VI. CONCLUSION

This article investigated the development and control of *shoushen* as a police power in China. The article tells two stories, and hints at a third. The first story explained upon the origin and development of *shoushen*. The article explored the social conditions that led to *shoushen* in the 1960s, economic circumstances accounting for its evolution in the 1980s, and finally political needs bringing about its eclipse in the 1990s. In the process, we observed the transformation of *shoushen* from a well-intended population control measure, into an all-purpose social control tool and a convenient means of commercial dispute resolution.

The second story informed us of various administrative, judicial and legal efforts by the Chinese leadership in controlling *shoushen*. Here the article gave us an overview of the various laws, policies and practices bearing upon the regulation, control and eradication of *shoushen*: the Circular of November 1, 1978, the Liaoning Higher People's Court (1978) Request for Instruction No. 20, the State Release (1980) 56, the Public Security Report (1985) 50, the Commercial Notice of September 8, 1990, Circular I of December 13, 1989, Circular II of November 6, 1990 and finally, the Police Law of 1995 and the PRC Criminal Procedure Law of

183. Case 10, *supra* note 107.

184. See "Hou Shisheng deng xu Anyue xian gongan renshen shanghai peichang an" (The case of Hou Shisheng and others suing Anyue xian public security for personal injury compensation) in *Adjudicated Cases*, *supra* note 1, pp. 719-721. In this case, Hou Shisheng sued Anyue County public security for the death of his son, Hou Youcai ("Hou"). On October 3, 1989, an Anyue County resident Hou, then 32 and unemployed, was placed under *shoushen* for suspected theft. On November 8, 1989, Hou rushed to get a blanket delivered by his mother and was accused of attempted escape. Hou was later assaulted and tortured by the guard on duty until death. The Anyue County People's Court awarded Hou 5,880 RMB, including the parent's living expenses of 2,200 RMB, the son's living and education expenses of 3,360 RMB, and Hou's burial expense of 300 RMB [hereinafter "Case 11"].

TABLE 7: A SUMMARY OF PERSONAL, PHYSICAL, AND ECONOMIC HARMS SUFFERED BY *SHOUSHEN* SUBJECTS IN EIGHT CASES

Case	<i>Shoushen</i> (days)	Physical harm	Reputation loss	Economic loss
2	11			
3	210	medical: Liang: 392 RMB Jiang: 249 RMB		Liang: 269 RMB Jiang: 269 RMB
4	196			production loss: 20,000 RMB; boat maintenance: 3 - 4,000 RMB
5	24	mental hospitalization 64 days	yes	wage loss medical fees hospitalization fees attendant fees nutrition fees Total: 4913 RMB
6	32		500 RMB	wage and incentive pay: 456 RMB
8	51			Hong: 357 RMB and Zhou: 357 RMB bail return: 8,000 RMB
10	17	Zhang's mental anguish: 320 RMB Zhang's medical cost: 85 RMB		Zhang's wage and incentive: 448 RMB Zhang's wife traveling/lodging: 100 RMB
11		assault and torture		Hou's parents' living expenses: 2,200 RMB Hou's living and education expenses: 3,360 RMB Hou's burial expense: 300 RMB Total: 5,880 RMB

1996. In the process, we observed a PRC political leadership, steadfastly yet unsuccessfully, trying to put *shoushen* abuses to rest.

What are some of the insight we can draw from this study? The most important lesson is that the origin, development, use and control of *shoushen* cannot be viewed, discussed, and understood

apart from China's economic and social context. *Mangliu* is an economic problem. *Liucuan* criminals are opportunistic predators. Both defy traditional control. Both are driven by the economy under transformation and a society in flux. Both escape the existing social control network. More significantly, both require a change in the understanding of the *nature* of crime and *paradigm* of social control.¹⁸⁵

Essentially, *mangliu* is an economic, not a criminal problem. It is a collective, not individual phenomenon. It is a social control, not a criminal punishment issue. *Shoushen* was adopted first to secure public order by neutralizing social threats through preventive detention; second, to re-introduce social control through re-integration of disorderly *mangliu* into a predicable community-based control network; and third, to repair social harm through education and reform of suspects, offenders and potential criminals (drifters). There is little concern about drawing a clear distinction between petty offense *mangliu* criminals, suspected *liucuan* criminals and potential criminals.

In practice, *shoushen* subjects (of which the *liucuan* criminal is most typical) are indistinguishable from the bulk of the *mangliu* population. The *mangliu* has no local (or transient) address and a foreign residence difficult (or impossible) to locate. Most crimes are committed by these faceless, rootless and desperate lot of people. In the end, *shoushen*, when applied to *mangliu*, loses all its discriminating qualities. All *mangliu* are potential subjects of management and control.

It is no accident that those in need of forced labor, education by labor, and sheltering for examination (*qiangzhi laodong*, *laojiao* and *shoushen*) are grouped together for administration, control and treatment purposes. From a policy standpoint, these people pose similar social problems requiring identical administrative response. Communist China's criminal justice policy is inseparable from its political, ideological and social agenda. Society has to be trans-

185. Prior to 1980 crime control was part of the larger population control strategy. The police, with the help of the mass, is supposed to keep a close watch over the coming and going of people. China has one of the best household registration system in the world. The "Zhonghua renmin gongheguo hukou guanli dengji tiaoli" (PRC Household Registration Law) (adopted at the 91st Meeting of the Standing Committee of the First NPC on January 9, 1958, promulgated by the President of the PRC on January 9, 1958) in "Gongan fa", *supra* note 19, pp. 683, 685; "Guanyu chuli hukao qianyi de tiaoli" (Regulation Regarding the Handling of Registration of Household Movement) (promulgated on Nov. 8, 1977). *Id.*, pp. 685-6.

formed. People must be re-educated. Social deviants, i.e., all those exhibiting non-socialist sentiments and anti-social tendencies — from petty offense criminals, to incorrigible ex-KMT officials, to unruly peasants — must and can be reformed.¹⁸⁶

More significantly, communist leaders define all non-conforming acts and persons as posing a threat to the Party's ideological purity and harm to the country's transformation process to communism. These people require stern control and complete reformation; and if needed eradication and extermination. There is little concern with individual rights and legal process in the face of paternalism and communism. Rehabilitation calls for the curing of the sick. Communism speaks of transforming the social nature of man. Both argue for a result-oriented approach in dealing with recalcitrant individuals.

Thus, economic *mangliu*, social deviants and criminal offenders are classified by their control and treatment needs, rather than with respect to their moral responsibility, criminal liability or actual harm. Politically, this conforms with existing communist ideological doctrine. Administratively, this eases the problem of social control. Practically, those who commit crimes and those who pose social risks (e.g., listless *mangliu*) are indistinguishable. Important for us to note here is the fact that *shoushen* is used more as a "social defense" device than a criminal measure. Social protection and population control is more important than retribution and punishment.

Finally, in the eyes of the police officers, the *mangliu* are "low life" to be controlled. From the viewpoint of the local residents, they are "foreign invaders" to be expelled. Neither of these groups deserve much legal protection, personal attention, or individualized treatment.

There is an emerging story yet to be told. The NPC in promulgating the PRC Criminal Procedure Law of 1996 clearly demonstrated its resolve in bringing law and order to the wide-spread police abuse of powers in China, particularly with the misuse of *shoushen*. This is a propitious beginning. What remains to be seen is how the PRC Criminal Procedure Law of 1996 will be received

186. See Donald J. Munroe, *The Concept of Man in Contemporary China* (University of Michigan Press, 1977), pp. 9-13 (All history is nothing but continuous transformation of human nature. The human "essence" is the ensemble of social relations. In Marx-Engels account, human nature is determined by both what men produce and how they produce. . . . A fundamental assumption in their historical materialism is belief in the perfectibility of human species).

and applied in the field. If our own experience in the United States with legal control over police misconduct is any guide,¹⁸⁷ the PRC Criminal Procedure Law of 1996 is just the beginning, not the end, of another meandering chapter in the unending fight against police abuse of power, once again attesting to the fact that there are many similarities in the social problems diverse nations face.

187. William A. Geller (ed.), *Local Government Police Management*, Third Edition, (Washington, D.C.: International City Management Association, 1991), pp. 11-13. ("The police response to the High Court's rulings of the 1960s was largely one of bitterness and outrage: criminals would have all the advantage; police would be shackled and impotent to deal with serious crime. . .").

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